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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 112.

WILLIAM S. THOMSON, CHARLES H. LANGDON, GEORGE C. BATCHELLER, AND ALVIN E. HEWITT, TRADING AS THOMSON, LANGDON & CO., APPELLANTS,

vs.

GEORGE H. WOOSTER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 15, 1881.

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1 The President of the United States to William S. Thomson, Charles H. Langdon, George C. Batcheller, & Allen E. Hewitt, Greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of May, A. D. 1879, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by George H. Wooster, and do further and receive what the said court shall have considered in that behalf; and this you are not to omit, under the penalty on you and each of you of two hundred and fifty dollars.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the twenty-sixth day of March, in the year one thousand eight hundred and seventy-nine, and of the Independence of the United States of America the hundred and third.

JOHN I. DAVENPORT, *Clerk.*

BETTS, ATTERBURY & BETTS,
Compl't's Sol'rs.

The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of May, 1879, or the bill will be taken *pro confesso* against them.

J. I. D., *Clerk.*

2 CITY AND COUNTY OF NEW YORK, *ss.:*

Andrew Comstock, being duly sworn, says: I am of mature age; on March 27, 1879, at No. 72 Worth street, said city, I served the within subpœna on Charles H. Langdon, one of the defendants therein named, by delivering a copy of said subpœna to him personally, and leaving the same with him, at the same time exhibiting to him this original.

I know the person so served to be one of the individuals described in said subpœna.

ANDREW COMSTOCK.

Sworn to before me, this 27th day of Mar., 1879.
[L. S.]
GEO. M. BAKER,
Notary Public, New York County.

I hereby depute Andrew Comstock to serve the within writ.

LOUIS F. PAYN,
New York, March 26th, 1879. *U. S. Marshal.*

I hereby certify that the within writ was served, as appears by affidavit of Andrew Comstock endorsed hereon.

LOUIS F. PAYN,
New York, April 16, 1879. *U. S. Marshal.*

U. S. circuit court. Filed April 17, 1879.

JOHN I. DAVENPORT, *Clerk.*

3 Circuit Court of the United States, Southern District of New York. In Equity.

GEORGE H. WOOSTER
vs.
WILLIAM S. THOMSON, CHARLES H. LANGDON, GEORGE C. BATCHELLER, and ALLEN E. HEWITT.

Notice is hereby given that upon the bill of complaint herein and affidavits and papers annexed thereto, copies of which are herewith served upon you, and upon such other papers and affidavits as may be hereafter served, we shall apply to this honorable court or one of the judges thereof at the court-house in the city of New York, on the 4th day of April, 1879, at the opening of the court on that day, or as soon thereafter as counsel can be heard, for a preliminary or provisional injunction, pursuant to the prayer of the bill.

We shall also then and there apply, if necessary, for an order permitting the inspection of the devices used by the defendant as folding guides, under such conditions as shall be proper; and we shall also then and there apply for such other and further relief as may be meet.

BETTS, ATTERBURY & BETTS,
Complainants' Solicitors, 20 Nassau Street.

To the defendants and their solicitors.

4 To the honorable the justices of the circuit court of the United States for the second circuit, within and for the southern district of New York, in equity:

George H. Wooster, of the city of New York, county of New York, State of New York, a citizen of the United States, bring this his bill against William S. Thomson, Charles H. Langdon, George C. Batcheller, and Allen E. Hewitt, composing the firm of Thomson, Langdon & Co., of the city of New York, county of New York, State of New York.

And thereupon your orator complains and says that heretofore and before the 5th of October, 1858, one Alexander Douglas, being then a citizen of the United States, was the true, original, and first inventor or discoverer of a certain new and useful invention, to wit, an improved folding guide for sewing machines, &c., and that the said invention was not known or used by others before his invention or discovery thereof, and was not at the time of the application for letters patent therefor in public use or on sale with the consent or allowance of the said Douglas, as the inventor or discoverer thereof, contrary to the provisions of the statutes of the United States in such case made and provided.

That the said Douglas made application in writing to the Commissioner of Patents of the United States for the granting of letters patent for said invention, and paid into the Treasury of the United States the fees required by law, and then and there also duly complied in all other respects with all the necessary conditions and re-

quirements of the statutes of the United States in such case
5 made and provided, prior to the granting of the letters patent hereinafter mentioned.

That on the 5th day of October, 1858, letters patent of the United States, bearing date on that day, were issued to the said Douglas according to law, whereby there was granted to him and his heirs, executors, administrators, or assigns, for the term of fourteen years from the 5th day of October, 1858, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the invention or discovery aforesaid, a description whereof was given in the words of the said Douglas, in the said schedule annexed to the said letters patent, and was made part of the same.

That the said letters patent were issued in the name of the United States of America, and were sealed with the seal of the Patent Office of the United States, and were signed by the Secretary of the Interior, and were countersigned by the Commissioner of Patents, and were numbered 21659, and were issued and delivered to the said Douglas.

That thereupon, after the issuing of the said letters patent as aforesaid, the said Douglas put the said invention into use, the same was largely used in his business, and he granted licenses to many persons to use the said invention under said letters patent upon payment of certain sums provided to be paid by them, and he also brought numerous suits at law in the circuit courts of the United States founded on said letters patent, in all of which the defendants submitted and took licenses under said letters patent, paying therefor, or verdicts were rendered against them sustaining the novelty of said invention and the validity of said letters patent.

And your orator further shows that upon the application of said Douglas, and due proceedings had, and upon a compliance with all of the provisions and requirements of law in such case made and provided, the said letters patent were duly extended for seven years from the fifth day of October, 1872, and said extended patent was thereupon duly assigned by instrument in writing, subscribed
6 by said Douglas to your orator.

And your orator further show- to your honors that heretofore, on or about the 10th day of December, 1872, your orator, finding that the said patent which had been granted was inoperative by reason of a defective or insufficient specification, thereupon, so finding, and the said error having arisen by inadvertency, accident, and mistake, and without any fraudulent or deceptive intention on the part of said Douglas or your orator, the said Douglas and your orator surrendered said patent to the Commissioners of Patents, according to the statutes of the United States in such case made and provided; and having amended the specification of claim in accordance with the decision of the said Commissioner in the premises, and having paid the fees prescribed by and in all other things complied with the statutes of the United States in such case made and provided, new letters patent of the United States for the same invention were, on the said 10th day of December, 1872, issued and delivered to your orator according to law, whereby there was granted

to him for the then unexpired term of twenty-one years, from the 5th day of October, 1858, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention or discovery of an improved folding guide, a description whereof was given in the words of said Douglas in the schedule annexed to the said reissued letters patent.

That the said new letters patent were issued in the name of the United States, and were signed by the Secretary of the Interior, and were countersigned by the Commissioner of Patents, and were sealed with the seal of the Patent Office of the United States, and were numbered 5180, and were issued and delivered to your orator.

And your orator prays that said letters patent, and the schedule annexed thereto, as aforesaid, may be deemed and taken as part of his bill, and to the originals of which, or a duly authenticated copy thereof, now in your orator's possession, and ready to be produced, he craves leave to refer.

7 And your orator further shows that he has put the said invention largely into use, and has granted, upon payment of established license fees, to those persons whose business has not competed seriously with his own, or that in which he has been interested, and he has also brought large numbers of suits in equity, and actions at law in the circuit courts of the United States, and in all said suits and actions said letters have been sustained, and in many of them the defendants submitted and took licenses under said letters patent upon payment of license fees, and some of said defendants were enjoined from further use of said invention.

And your orator has, ever since the date of the said assignment to him, been and now is entitled to all the rights, interests, and privileges thereby secured unto him in and to the said invention or discovery, in the said letters patent particularly set forth, and is, and ever since the date thereof has been, entitled to the exclusive use of the said invention and improvement.

And your orator further shows unto your honors that the said invention or discovery so patented, aforesaid, unto him, is of very great utility; and that the same has been extensively introduced into public use, and that the public have generally acquiesced in your orator's exclusive right to the same; and your orator would, but for the wrongful acts of the said defendants and others acting in concert with them, have made large gains, profits, and advantages, from the manufacture, use and sale of the said invention; and your orator would, but for the wrongful acts and doings of the said defendants and others acting in concert with them, now be enabled to use the said invention, to which he is entitled to the exclusive right as aforesaid, with profit and advantage, but that by the said wrongful acts and doing he is now prevented and hindered from so doing.

And your orator further shows unto your honors, upon information and belief, that the said defendants, well knowing the premises and the rights and privileges secured unto your orator, and

8 in order to deprive him of the profits, benefits, and advantages which might and otherwise would have accrued to him, at Bridgeport, Conn., & elsewhere, and within the said southern dis-

trict of New York, and without the license or permission of your orator, they, the said defendants have, since the date of said reissue and prior to the commencement of this suit, unlawfully and wrongfully made, or caused to be made, sold or caused to be sold, used or caused to be used, one or more folding guides, each and all containing the said invention, discovery, improvements, and combinations, the exclusive right to which is secured to your orator, as hereinbefore set forth, and which said unlawful making, use, and sale, by the defendants as aforesaid, is a violation and infringement of your orator's exclusive rights and privileges, and that the said defendants have derived and received, and are still deriving and receiving, from such use great gain and profits, but to what amount your orator is ignorant and cannot set forth, but your orator prays that the defendant may be required to make a disclosure of all such gains and profits.

And your orator in like manner avers that the defendants, though requested to desist from such unlawful use, and to pay to your orator such gains and profits as the defendants have actually made, refused so to do, by means whereof your orator is and has been greatly injured, and is now hindered from putting the said invention or discovery into successful operation, and from hindering others so to do, and is deprived and prevented from receiving the gains and profits to which he is lawfully entitled, from the exclusive rights and privileges so granted and secured to him as aforesaid, and which he would have derived and acquired, and would now derive and acquire, but for the said wrongful acts of the said defendants.

And your orator prays that the said defendants may be compelled by a decree of this honorable court to account for and pay
9 over and unto your orator all such gains and profits as have accrued or arisen to, or been earned or received by the said defendants, and all such gains and profits as your orator would have received, but for the said wrongful acts and doings of the said defendants, and all damages your orator has sustained thereby, and that this honorable court will assess the same or cause them to be assessed, under its direction, and will increase the same in its discretion as provided by the law.

And that the said defendants, their attorneys, solicitors, clerks, servants, agents, and workmen may be perpetually enjoined and restrained by the decree of this court from directly or indirectly making, or causing to be made, using or causing to be used, or vending to others to be used, in any manner, any folding guides containing or embodying the said invention granted by the said letters patent, as issued aforesaid, and from infringing upon or violating the said letters patent by the use or sale of the said invention in any way whatsoever. And that the said defendants may be decreed to pay the costs of this suit; and that your orator may have such other relief as the equity of the case may require, and as to your honors may seem meet.

To the end, therefore, that the said defendants may, if they can show why your orator should not have the relief hereby prayed,

and may full, true, direct, and perfect answer make, according to the best of their, or their clerks, agents, or workmen's knowledge, remembrance, information, and belief to the several matters hereinbefore averred and set forth, as fully and particularly as if the same was here repeated, paragraph by paragraph, and they were thereto severally and specifically interrogated—

May it please your honors to grant to your orator a writ of *subpœna ad respondendum*, issuing out of an under the seal of this honorable court, directed to the said defendants, commanding them to be and appear, and make answer unto this bill of complaint, and to perform and abide by such order and decree herein as to this court may seem required by the principles of equity and good conscience.

May it also please your honors to grant to your orator a provisional or preliminary injunction issuing out of and under the seal of this honorable court, enjoining and restraining the defendants, and each of them, and their and each of their attorneys, solicitors, clerks, servants, workmen, and agents to the same purport, tenor, and effect hereinbefore prayed for in regard to said perpetual injunction.

And your orator will ever pray.

GEO. H. WOOSTER.

BETTS, ATTERBURY & BETTS,
Complainant's Solicitor.
FREDERIC H. BETTS, *of Counsel.*

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss.:*

On this 25th day of March, 1879, before me, came George H. Wooster, to me personally known, who, being daly sworn, did depose and say that he is the complainant in the foregoing bill of complaint named, and that he has read the said bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on information and belief, and as to those matters he believes it to be true.

[L. S.] CHAS. SPIRO,
Notary Public, N. Y. Co., (32).

The U. S. Patent Office to all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of the office of the reissued letters patent granted George H. Wooster, dated December 10th, 1872, No. 5180, for "Improvement in folding guides for sewing-machines."

In testimony whereof, I, M. D. Leggett, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-seventh.

[L. S.] M. D. LEGGETT, *Commissioner.*

No. 5180. Reissue.

The United States of America to all to whom these presents shall come:

Whereas Alexander Douglas, of New York, New York, assignor by mesne assignments to George H. Wooster, has presented to the Commissioner of Patents a petition praying for the reissue of letters patent for an alleged new and useful improvement in folding guides for sewing-machines (for which letters patent were issued to him, dated October 5, 1858, and extended seven years from October 5, 1872; which letters having been surrendered, the same have been cancelled, and new letters ordered to issue to said assignee on an amended specification), a description of which invention is contained in the specification of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

12 Now, therefore, these letters patent are to grant unto the said George H. Wooster, his heirs or assigns, for the term of twenty-one years from the fifth day of October, one thousand eight hundred and fifty-eight, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this tenth day of December, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States of America the ninety-seventh.

[L. S.] B. R. COWEN,
Acting Secretary of the Interior.

Countersigned:
M. D. LEGGETT,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

ALEXANDER DOUGLAS, of New York, N. Y., Assignor, by mesne assignments to George H. Wooster.

Improvement in Folding Guides for Sewing-Machines.

Specification forming part of letters patent No. 21659, dated October 5, 1858, extended seven years; reissue No. 5180, dated December 10, 1872.

To all whom it may concern:

Be it known that I, Alexander Douglas, of the city, county, and State of New York, have invented a new and improved folding guide for folding and turning in the edges of a piece of cloth or other material for binding, or for other similar purposes, preparatory to sewing; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to

the accompanying drawing forming part of this specification, in which—

13 Figure 1 is a view of my folding guide so formed as to fold the material simultaneously upon the center and upon both edges. Figs. 2, 3, 4, 5, 6, and 7 are transverse sections of the said guide at the points where the strengthening transverse pieces B B, &c., are situated, as shown in Fig. 1. Fig. 8 is a cross-section of a binder which is of the same sectional form at both ends. Fig. 9 is a cross-section of a binding as it issues from the said guide.

Similar letters of reference indicate corresponding parts in the several figures.

To enable others to make and use my invention, I will proceed to describe its construction and operation.

The simplest method of constructing my improved guide is to take a plate of metal, A, of a width somewhat greater than that of the strip or piece of cloth or other material which is to be folded, and have the edges of such plate turned toward each other the whole length of the plate. The plate having its edges thus turned or bent has the bent edges turned again on the lines B^2, B^3, the turn commencing at a short distance from the end shown in Figs. 1 and 2, and increasing toward the other end, as shown in Figs. 3, 4, 5, 6, and 7. If it is desired to fold the material in the center, the plate may be then again bent at or near the middle, commencing at the end shown in Fig. 2, and gradually increasing all the way along to the other end, as shown in section in Figs. 2, 3, 4, 5, 6, and 7. This gives the edges of the said plate the curved and twisted appearance shown in Fig. 1. This piece of metal A is the guiding surface of the folder. Its shape and folds determine the number and character of the folds in the material to be guided. The plate A may be strengthened by transverse pieces B B, which are secured to its edges, and lie as close as practicable to the concave side of the plate, just leaving space enough for the cloth to pass between them and the plate A. By inserting a strip of cloth or other material into the guide at the end shown in Fig. 2, and drawing it toward the other end, it will follow the configuration of the surface of the exterior

14 plate A, and will be folded into a shape indicated by the turnings of said guiding-surface. Small projections, provided with holes for the passage of cord, may be arranged, as shown at Fig. 1, F and H, so as to guide a cord or cords under the turned edge or edges of the material.

To apply the binding to the edge of cloth or other material, such edge is placed in such relation to the guide as is shown in the line D in Figs. 1 to 9, and is drawn along at the same time that the binding is drawn along, either by the feed of a sewing-machine or other device. The binding is stitched at the proper places for holding the edges and the cord, if a cord is used. The ordinary line of stitching is indicated in Fig. 9 by the line C C.

If the guide is used in combination with a sewing-machine, as will ordinarily be the case, it will be attached to the cloth-plate in such a position as to discharge the folded material under the needle and in the line and diriction of the feed.

In Figs. 1, 3, and 6 are shown screws for fastening the guide, there represented, to the cloth-plate. The direction of the screws indicate what will be, in that case, the position of the guide. In Fig. 8 I have shown a section of another form of binder for the same purpose and productive of the same result, but which is of the same sectional form throughout, and is not gradually folded upon itself in converging lines, as described and shown in the case of the first-mentioned guide.

It is manifest from the above description that if the guide be not turned or folded together through the center, or if one of the edges be not folded over, or if the strip of material be not wide enough to receive the fold on both edges, in the first case the material will be folded only upon each of the edges, and in the last cases it will be folded near the center and upon one edge only.

The great advantage of my guide is, that by reason of the folding of the edges it permits the use of raw-edged material without a selvage; another is that it combines cording with binding.

I do not claim guides for folding material through the center only, as those are described in Sweet's patent of 1853, Nichol's patent of 1856, McCurdy's patent of 1856, Singer's patent of 1856, and by others; nor do I claim guides for turning or hemming one edge of a piece of cloth or other material, except when the guide is so shaped as also to simultaneously either fold the material in the center or upon the other edge; but—

What I do claim is as follows:

1. A folding guide, the guiding surface of which is turned or folded at each edge, so as simultaneously to fold the material on each edge, substantially as described.

2. A folding guide, the guiding surface of which is turned or folded so as simultaneously to fold the guided material at or near the center and upon one or both edges, substantially as described.

3. A folding guide, the guiding surface of which is gradually turned or folded at each edge so as simultaneously to fold the material on each edge, substantially as described.

4. A folding guide, the guiding surface of which is gradually turned or folded so as simultaneously to fold the material at or near the center and upon one or both edges, substantially as described.

5. A folding guide, substantially as described, provided with means, substantially as described, for attaching the same to and combining it with a sewing machine.

6. A folding guide, substantially such as described, provided with a cord guide, as and for the purposes set forth.

ALEX. DOUGLAS.

Witnesses:

EDWIN A. BOOTH.
WM. S. PACKER.

16 Circuit Court of the United States, District of ——.

GEORGE H. WOOSTER
ag'st
WILLIAM S. THOMSON and others.

SOUTHERN DISTRICT OF NEW YORK, } ss:
City and County of New York, }

George H. Wooster, being duly sworn, says: I am the complainant in this suit. For many years past I have been engaged in the business of manufacturing and selling ruffles and trimmings, in the production of which folding guides described in said letters patent, and upon which this suit is brought, have been largely used.

I am thoroughly conversant with the uses and purposes of said letters patent and with the utility of the same. Prior to the introduction of such guides into use, it had been the custom in binding or banding goods either to use selvedge edged material for binding or banding or to fold over the edges of such material by hand. By the use of one of these guides with the sewing-machine the operation of folding the edges, which had been previously folded by hand, was greatly simplified and increased in rapidity. A single operative, with a sewing-machine provided with such guides, can bind or band five or six times as many goods as was previously done by hand in the same time. By means of the introduction of such guides also the expense of binding or banding has been very largely reduced, to wit, to about one-fourth or fifth the previous expense.

During the original term of said letters patent I was a licensee thereunder, and shortly after the said letters patent were ex-
17 tended I purchased the same of the inventor, Alexander Douglas. My rights under said letters patent have been largely acquiesced in and recognized by persons using the invention established by suits in the courts. I have granted large numbers of licenses under said reissued letters patent to various persons whose business did not seriously compete with my own, or who were desirable persons to be permitted to use said invention. I have, however, always exercised a discretion in granting or refusing licenses to persons applying for the same. The price of such licenses is fixed with reference to the number of folding guides to be used, and the length of time for which the licensee desires the license. The rates of license when granted varied from fifty dollars for the use of a single guide for one year, to, in one instance, the sum of seven thousand dollars for the use of an unlimited number of guides in the business of a single corporation for the whole term of the patent. My usual practice has been to grant licenses for the term of a single year; said licenses have been granted only to persons who have fully acknowledged the novelty of the invention and the validity of said letters patent. The form of the license usually granted, is as follows:

"Whereas certain letters patent of the United States, bearing date the 5th day of October, 1858, were granted to Alexander Douglas, of the city of New York, for an improved folding guide for sewing-

machines, &c., and whereas George H. Wooster, of said city, has, by assignment from said Alexander Douglas, become sole owner of said letters patent, and whereas said letters patent have been extended for seven year from October 5th, 1872, and reissued December, 10, 1872, No. 5180;

And whereas ——— ———, of ———, of the State of ———, parties of the second part, are desirous of obtaining a license to use said folding guide;

Now this indenture witnesseth, that the said George H.
18 Wooster, party of the first part, for and in consideration and in case of the due and faithful keeping and performing of each and all of the conditions, agreements, and admissions, hereinafter contained, to be kept and performed by the said parties of the second part, has given and granted, and by these presents does give and grant, unto the said parties of the second part license to use ——— folding guide—, containing the inventions described in said letters patent, for one year from the date hereof, at their place of business, No. — ——— street, in the ——— of ———, and no longer, and not otherwise or elsewhere, without written permission of said George H. Wooster, his executors, administrators, or assigns, that is to say:

First. The said parties of the second part, for their heirs, executors, and administrators, fully admitting and acknowlegding the force and validity of said letters patent, and all reissues thereof, and the novelty of the invention therein described and claimed, covenant and agree to pay to said George H. Wooster, as a patent fee or royalty, the sum of ——— dollars, in lawful money.

Second. The said parties of the second part further covenant and agree that during the term of said letters patent they will not make, use, sell, lend, give away, or keep on hand any folding guide or guides, containing any of the inventions described and claimed in said letters patent, without the written license of said party of the first part.

Third. That said parties of the second part further covenant and agree that they will not contest in law or equity, nor aid, or assist, or advise others to contest in law or equity, the validity of the above-described patent, or any reissue thereof, and that they will never refuse to pay the party of the first part the license fee as set forth, if said patent or any reissue thereof should be litigated or contested at law or in equity by other parties.

19 Fourth. The said parties of the second part further covenant and agree to mark, stamp, or cast indelibly on each and every folding guide used the words, Patented October 5th, 1858, extended September 24th, 1872, reissued December 10th, 1872, licensed to —— only, or some intelligible abbreviation thereof.

Fifth. The said parties of the second part further covenant and agree that the said party of the first part, or his assigns, or his or their duly constituted agents, shall have the right and privilege and shall be permitted at any reasonable time or hour to visit and inspect the establishment of the parties of the second part where said folding guides are and inspect and count the same.

Upon the failure of the parties of the second part at any time faithfully to carry out and perform any or either of the said above-mentioned conditions and promises, the said party of the first part, his executors, administrators, or assigns, may revoke and annul this license, in which case this license and all rights and privileges of the parties of the second part herein shall forever cease and determine; but the said parties of the second part shall not be thereby relieved from any of the contracts or agreements on their part herein contained.

It is further distinctly understood and agreed between the parties as follows:

No folding guide shall be, or is hereby, licensed unless it shall be marked or stamped as aforesaid, and while it shall be so stamped or marked.

It is further distinctly understood and agreed that this license is a personal privilege of the parties of the second part only, and is not to be, and cannot be assigned, transferred, divided, shared, apportioned, or used in connection with any person not named herein.

It is further distinctly understood and agreed that the parties of the second part have no right or title of any kind of any folding guide itself which is hereby licensed, such guides are not lawfully made, nor is any property for sale of the same vested in the parties of the second part, nor can they be transferred so as to vest any right to use the same in any party not named herein, but upon the expiration of this license they are to be delivered to said party of the first part if required, unless this license be renewed or a new license taken from the party of the first part.

In witness whereof, the parties above named have hereunto set their hands and seal, this day of ——, 187—.

As above stated, said reissued letters patent have been largely in controversy in the circuit court of the United States in suits founded thereon. I enumerate here a number of such suits, with results.

I commenced one suit in equity against one James Gilmour, and applied for a preliminary injunction. Such application was strenuously resisted by counsel; but a preliminary injunction was granted restraining the defendant from the use of all such folding guides except four, for which he claimed to have a license. I also commenced a suit in equity against the firm of G. Sidenberg & Co., and upon application for a preliminary injunction, such injunction was granted except as to certain folding guides, also then claimed to have been licensed. I also commenced suit in equity against the firm of Kursheedt, King & Co., in which an application for preliminary injunction was made, but not granted; but upon testimony being taken for the final hearing the defendants abandoned their defence, submitted to letters patent, and a decree was entered against them at the February term, for the year 1874, of the circuit court for the southern district of New York. Said decree was as follows, as by the records of said court, to which I hereby for greater certainty refer, will fully appear:

21 "At a stated term of the United States circuit court, held in and for the southern district of New York, at the court-house, in the city of New York, on the — day of ——, 1873.

Present: Hon. L. B. Woodruff, judge.

GEORGE H. WOOSTER
vs.
FREDERICK A. KURSHEEDT, GEORGE E. KING, and ALEXANDER E. KURSHEEDT.

The defendants in this case voluntarily, by his solicitor, submitted to the decree upon the pleadings and proofs herein in favor of the complainant, it is thereupon ordered, adjudged, and decreed—

That Alexander Douglas was the first true and original inventor of the invention described and claimed in the letters patent granted to the said Douglas, October 5, 1858, for a folding guide for sewing-machines, and in the reissue of said letters patent granted to the complainant December 10, 1872, No. 5180; and that said letters patent were granted and extended and assigned to the complainant and reissued as aforesaid. And that the defendants have infringed said letters patent by the manufacture and use of certain folding guides for sewing-machines, to wit, folding guides, the guiding surface of which is so turned and folded that the material conveyed thereby is folded, on both edges; and also folding guides, the guiding surface of which is so turned and folded that the material conveyed thereby is folded at or near the centre and upon one edge.

22 And it is further ordered, adjudged, and decreed that the complainant is entitled to an account of the profits received by, or which have accrued to, the defendants by the manufacture, use or sale of such folding guides, or any folding guides infringing said reissued letters patent, and also to an assessment of damages received by the complainants by reason of the infringement of the defendants, and also to an injunction enjoining the defendants, and each of them, and their clerks, agents, and workmen from directly or indirectly infringing said letters patent.

And it is further ordered, adjudged, and decreed that an injunction issue accordingly out of and under the seal of this honorable court, and that it be referred to Joseph Gutman, Jr., to take and state such account and assess such damages, and report thereon with all convenient speed.

And it is further decreed that the complainant recover the costs of this suit, and that all further direction be reserved.

(Signed) L. B. WOODRUFF,
Circuit J.

The defendants hereby submit to the foregoing decree.
M. A. KURSHEEDT,
Def'ts' Sol'r.

Endorsed: Filed March 6, 1874."

Said defendants took a license under said letters patent substantially in the form above set forth, paying a large sum of money

therefor. I commenced actions of law founded upon said reissued letters patent in the circuit court of the United States for the southern district of New York against the following named persons: G. Schwab, Randal W. Roberts and Thomas Dewitt, G. Straus & Julius Johnson, W. Ford, Lucius M. Stanton & Thomas G. Stanton, J. C. Glover, Nathalie Myerson & Hugo H. Plaut, L. Saunders, Adolph Cohen & Gustav Saenger, L. Lowenstein, A. Eisig, James Dunn, John Hallowell & John Service. Of these, all submitted to
23 my rights under said letters patent, and took licenses under the same in form above set forth, paying the fixed sums established by me for licenses for the number of folding guides desired to be used by them, except the following, to wit: G. Schwab, Roberts & Dewitt, J. C. Glover, Myerson & Plaut, against whom said actions are still pending, and have not yet been reached for trial, but no defense has been set up in said actions against the validity of said letters patent.

I also commenced suits in equity against the Palmer Manufacturing Company, and against E. W. Taylor & Margaret Woodbury, and against John W. Simpson & Co., and against Michael Hertz in the same court, and made motions for injunction therein, which came on to be heard on the 28th day of November, 1874, before said court, and, after due consideration had, preliminary injunctions were granted by said court in each and all of said causes, on the 21st day of December, 1874, and injunctions duly issued therein.

In the suits in equity against Kursheedt, King & Co., Palmer Manufacturing Co., and others, large numbers of defenses have been set up and relied upon by the defendants. It has been claimed that the invention described and claimed in said reissue have been described in one or more of the following patents: That granted to Seth P. Chapin, February 19, 1856; that granted James S. McCurdy, February 26, 1856; that granted Henry L. Sweet, December 20, 1853; that granted to Henry B. Nichols, August 29, 1854, and January 30, 1855. But said defences have been abandoned in the suits enumerated, and are not true, as I verily believe, in fact. In said suits it has also been claimed that prior knowledge or use of said invention described in said reissue has been had by one or more of the following persons:

Henry L. Sweet, Albert F. Johnson, John B. Nichols, John J. Sibley, John Gault, Nesbitt D. Stoops, Rufus Leavitt, Martin Leavitt, L. M. Hussey, William O. Grover, William E. Baker, Nathaniel
24 Wheeler, John Van Winkle, Benjamin Trott, Charles Espe, Jonas Frazer, Miss Emma Bartlett, Miss Augusta Brown, Emery Farnsworth, James Bolton, Francis Potter, John W. Ripley, George Platts, Richard Blees, John T. Jones, John W. Watson, Trueman W. Repper, George Moore, George B. Sloat, Charles W. Thomas, Daniel Rice, Leander W. Langdon, Samuel J. Parker, Miles L. Clinton, Charles L. Clinton, Myron Clinton, George W. Thomas, Isaac M. Singer, Orson C. Phelps, Seth P. Chapin, James S. McCurdy, J. Melvin Brant, William H. Plummer, Salem Wilder, Rufus Leavitt, H. H. Blanchard, Charles H. Hitchcock, George A. Hitchcock, Robert

Penrose, Hallis W. Cole, George Churchill, John M. Corlies, and James Penrose.

But said defences have been abandoned by said defendants, and are not true, as I verily believe, in fact. I verily believe that the said Alexander Douglass was the original and first inventor of each and all the inventions described and claimed in said reissued patent, and that said letters patent are good and valid in law.

25 I also brought a number of suits in this court against various infringers in addition to those above named. In several of them motions for preliminary injunctions were elaborately argued by counsel before this court, and, notwithstanding all defences which were adduced, preliminary injunctions were granted.

Some of the cases in which such injunctions were granted after argument were the following:

E. S. Mills & Co., & Emil S. Levi, injunctions granted March 6th, 1875; John Asher *et al.*, March 20th, 1875; John Lacy, March 20th, 1875.

I annex hereto a partial list of persons, with dates and times of their licenses, who have taken licenses of mine under said patent, using said binders for manufacturing purposes, & paying me license fees at the rate of $50 per year for one binder, $100 for three, $250 for ten, &c.

GEO. H. WOOSTER.

Sworn to before me, this 25th day of March, 1879.

CHAS. SPIRO,
Notary Public, N. Y. Co. (32).

26

M'ch 12, '73. Bennett & Sweezy, 2 years, 3 guides.
Oct. 5, '72. Hermann Aukman & Co., 7 years, 5 guides.
Oct. 5, '72. Industructable Ruffle Co., 7 years, 10 guides.
Dec. 1, '75. J. M. Corliss & Son, term, 25 guides.
Oct. 5, '74. Robert Wedner, term, 3 guides.
Dec. 1, '75. Pine, Miller & Dunham, term, 25 guides.
Dec. 1, '75. Simm & Co., term, 25 guides.
Dec. 1, '75. Bisco & Corning, term, 25 guides.
Oct. 5, '72. Silberberg Bros., term, 5 guides.
Dec. 1, '75. Park, Ide & Holmes, term, 25 guides.
Dec. 1, '75. Gunnison & Stewart, term, 25 guides.
Dec. 1, '72. Sandford & Robinson, term, 25 guides.
Dec. 1, '75. Ide Bros. & Bruce, term, 25 guides.
Dec. 1, '75. J. Stettheimer & Co., term, 25 guides.
Dec. 1, '75. Geo. B. Cluett Bros. & Co., term, 25 guides.
Dec. 1, '75. Wheelock & Hawk, term, 25 guides.
Oct. 6, '76. S. A. House & Son, 3 years, 15 guides.
Jan'y 1, '76. Chas. Bergenstein, term, 2 guides.
Nov. 20, '75. Arnold, Constable & Co., term, 3 guides.
Feb'y 1, '77. Ignatz Modry, 1 year, 1 guide.
Oct. 5, '72. S. A. House & Son, 1 year, 40 guides.
Oct. 5, '72. Hollingsworth & Leeds, Oct. 5, '74, 2 years, 4 guides.
May 1, '75. Crotty & Lindhaur, 1 year, 5 guides.
Oct. 6, '73. Leopold Lowenstein, 1 year, 1 guide.

Jan'y 2, '74. Uhlig & Feulchwanger, 1 year, 1 guide; Jan'y 1, '76, 1 year, 1 guide.
Jan'y 15, '74. S. Rothschild & Bros., 1 year, 6 guides, renewed Jan'y 1, '75.
Ap'l 1, '74. L. Sanders, 1 year, 1 guide.
27 Oct. 5, '74. Bernhard & Hocksteder, 1 year, 2 guides.
Oct. 27, '74. A. M. Levino & Co., 1 year, 1 guide.
M'ch 1, '74. R. Hayward, M'ch 1, '76, 1 year, 3 guides.
Jan'y 1, '75. Elizabeth Weldon, 1 year, 3 guides.
Oct. 5, '75. John L. Davis, 1 year, 1 guide.
M'ch 1, '75. R. Howard, 1 year, 3 guides.
May 1, '75. John P. Jackman, 1 year, 1 guide.
Ap'l 2, '75. Meyer Jonasson, 1 year, 1 guide.
Jan'y 6, '75. Isador Kann, Jan. 6, '76, 1 year, 1 guide.
Feb'y 1, '75. John F. Handayer, 1 year, 10 guides.
Nov. 22, '75. Bulton & Dubois, 1 year, and to end of patent, 1 guide.
Jan'y 27, '75. Zettmacher & Rosenheim, 1 year, 1 guide.
May 1, '74. Sterns & Heilbrun, 1 year, 3 guides; May 1, '75, 1 year, 6 guides.
Ap'l 1, '74. G. Straus & Co., 1 year, 3 guides.
Jan'y 1, '75. E. & R. Finlay, Jan'y 1, '76, 1 year, 3 guides.
Feb'y 1, '75. Rodgers, Wardrobe & Co., 1 year, 3 guides.
Jan'y 1, '76. Fisk, Clark & Flagg, 1 year, 3 guides.
Jan'y 10, '76. John W. Court, 1 year, 1 guide.
Jan'y 3, '76. Clark & King, renewed to term, 1 year, 3 guides.
Jan'y 1, '76. Hill, Moynan & Co., 1 year, 1 guide.
Apr'l 1, '76. Jackman & O'Hara, 1 year, 3 guides.
May 1, '75. Moses Newman, 1 year, 3 guides.
Feb'y 15, '75. B. L. Cohen, 1 year, 2 guides.
Feb'y 1, '76. Goldsmith & Plant, 1 year, 2 guides.
Feb'y 1, '76. Fairchild, Hill & Co., 1 year, renewed to term, 3 guides.
Jan'y 22, '76. A. Zettmacher, 1 year, 1 guide.
Oct. 5, '74. S. A. House & Son, 1 year, 40 guides.
28 Oct. 1, '74. W. M. Humphrey & Bro., 1 year, 3 guides.
M'ch 18, '74. Klein & Hoexter, 1 year, 3 guides.
M'ch 1, '74. Einstein & Bernhard, 1 year, 3 guides.
May 1, '75. Danzeq Bros., Jan'y 1, '76, 6 mo's, 2 guides.
Ap'l 1, '76. H. Sprigel, 6 mo's, 2 guides.
July 13, '76. Morris Wood & Co., 3 years, 1 guide.
M'ch 1, '74. E. Selills & Co., 2 years, 3 guides.
Oct. —, '72. Davis, Foster & Co., 1 year, 3 guides.
Oct. 6, '72. Wechsler, Abrahams & Co., 1 year, 7 guides.
Oct. 5, '73. A. Eisig, 1 year, 1 guide.
Oct. 1, '72. Chas. Scott & Co., 1 year, 1 guide.
Oct. 5, '72. Henry S. Brown, 1 year, 2 guides.
Jan'y 1, '77. Geo. P. Medwin, 1 year, 3 guides.
Jan'y 1, '78. Ignotz Stein, 1 year, renewed to term, 1 guide.
Feb'y 1, '77. Caldwell & Penny, 1 year, renewed, 1 guide.
Feb'y 1, '77. Back & Fischel, term, 6 guides.

Ap'l 1, '78. Fairchild, Hill & Co., 1 year, 3 guides.
M'ch 22, '78. Rosenbaum & Stein, 1 year, 2 guides.
July 2, '77. Bertha Brandon, 1 year, 1 guide.
M'ch 7, '77. Freitag & Vogel, 1 year, renewed, 3 guides.
July 18, '78. Jacob Schoenhof, 1 year, 2 guides.
Jan'y 25, '78. Kish & Simson, 1 year, renewed, 1 guide.
July 18, '78. L. Dryfoos & Co., 1 year, 3 guides.
Jan'y 25, '78. John S. Leese, term, shop-right.
M'ch 27, '78. Wallach's Sons, term, 10 guides.
Feb'y 1, '77. M. Nathan, 1 year, renewed Feb'y 1, 79, 3 guides.
29 Aug. 1, '78. N. Hyman, 1 year, 3 guides.
Jan'y 1, '78. V. H. Rothschild, 1 year, renewed, 5 guides.
Jan'y 1, '78. Simeon Gutman & Sons, 1 year, renewed, 5 guides.
1875. Wilcox & Gibbs Sewing Machine Co.
Ap'l 28, '75. Domestic Sewing Machine Co., past use.
July 1, '75. Victor Sewing Machine Co.

30 Circuit Court of the United States, District of ———.

GEORGE H. WOOSTER, *ag'st.* ——— ———

SOUTHERN DISTRICT OF NEW YORK, } ss:
City & County of New York, }

ALEXANDER DOUGLAS, being duly sworn, says:

31 I am the patentee of the original letters patent dated October 5th, 1858, No. 21659, for an improvement in folding guides or sewing-machines. I am — years of age. I reside in the city of New York. My occupation is that of a dealer in coal. I have no interest in this suit. My first application for the letters patent No. 21659, was made upon the 10th day of April, 1856. I put the invention described in said letters patent in use in my own establishment as early as the summer of 1854. The following is a copy of my first application for letters patent for my invention afterwards granted on the 5th day of October, 1858:

Petition.

To the Commissioner of Patents:

The petition of Alexander Douglas, of New York, in the county of New York, and State of New York, respectfully represents:

That your petitioner has invented a new and improved folding guide for folding and turning in two edges of a piece of cloth or other material for binding, or for other purposes preparatory to sewing, which he verily believes has not been known or used prior to the invention thereof by your petitioner.

He therefore prays that letters patent of the United States may be granted to him therefor, vesting in him and his legal representatives the exclusive right to the same, upon the terms and conditions expressed in the act of Congress in that case made and provided, he having paid thirty dollars into the Treasury, and otherwise complied with the requirements of said act.

And he hereby authorizes O. D. Munn, S. H. Wales and A. E. Beach, of the firm of Munn & Co., or their accredited agents, to
32 act as his attorneys in presenting the application, and in making all such alterations and amendments as may be required.

ALEXANDER DOUGLAS.

Oath.

CITY AND COUNTY OF NEW YORK, } ss.:
State of New York, }

On this 9th day of April, 1856, before the subscriber, a commissioner of deeds in and for said county, personally appeared the within named Alexander Douglas, and made solemn oath that he verily believes himself to be the original and first inventor of the within described improved folding guide for folding and turning in two edges of a piece of cloth or other material for binding, or, for other purposes, preparatory to sewing; and that he does not know or believe that the same was ever before known or used; and that he is a citizen of the United States.

[SEAL.] M. S. BROWSHER,
Commissioner of Deeds.

The schedule referred to in these letters patent and making part of same.

To all whom it may concern:

Be it known that I, Alexander Douglas, of the city, county, and State of New York, have invented a new and improved folding guide for folding and turning in two edges of a piece of cloth or other material for binding, or for other purposes, preparatory to sewing; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawing forming part of the specification, in which—

Fig. 1 is a front view of my improved guide as adapted for binding and inserting two cords within the binding.

Figs. 2 and 3 are opposite end views of the same.

33 Fig. 4 shows a section of the binding and cording applied to the edge of a piece of goods.

Fig. 5 exhibits an end view corresponding with Fig. 3 of the guide, as adapted for binding without cording.

Similar letters of reference indicate corresponding parts in the several figures.

This guide is formed by combining and arranging, as hereinafter described, two guides, such as are described and claimed in the patent of S. P. Chapin, dated Feb. 19, 1856.

To enable others to make and use my invention I will proceed to describe its construction and operation.

The simplest method of constructing my improved guide is to take a plate of metal, A, say about ten (10) inches in length, and of a width somewhat greater than that of the strip or piece of cloth or other material which is to be folded, and have its edges turned in,

and turn the whole length of both edges of the said plate towards each other, as shown at *a a* in the end view Fig. 2, leaving just width enough between the two bends *a a* to receive the strip or piece of cloth in the manner indicated by the red line in Fig. 2, which represents a transverse section of the cloth.

The plate having its edge thus turned or bent, has the bent edges turned again; the turn commencing at a short distance from the end, shown in Figure 2, and increasing towards the other end shown in Figure 3, till at the latter end, the bends *a a*, are turned towards each other, and the edges of the plate away from one another. This second bend is represented at b b in Fig. 3.

The plate is then again bent near the middle, commencing at the end shown in Fig. 2, and increasing all the way along to the other end, where the two ends b b come nearly together. This gives the edges of the plate the curve and twisted form shown in Figure 1. The plate A is strengthened by narrow transverse pieces of plate *c c*, which are secured to its edges and lie as close as practicable
34 to the convex side of the plate, just leaving space enough for the cloth to pass between them and the plate A.

By inserting a strip of cloth or other material between the bends a a, at the end of the guide shown in Figure 2, and drawing it towards the other end, the edges are gradually folded down and the strip folded in the middle till it assumes the form shown in Fig. 3 or Fig. 5 in red outline. The principal difference between the forms of the guides shown in Figs. 3 and 5 is that the bends e and b are made rounder in that shown in Fig. 3, as it is intended for the insertion of a cord d at the edge of the material to which the binding is to be applied, which is shown by blue outlines in Figures 3, 4, and 5, and another cord e in one turn of the binding; and this guide has tubes g g attached to conduct the cord *d*, as shown in Figure 1. The guide shown in Figure 5 is simply for folding and turning in both edges of a binding without cording.

To apply the binding to the edge of a piece of cloth or other material, the said edge is placed within the guide, as shown in Figs. 3 and 5, and drawn along at the same time as the binding piece is drawn along. When no cording is inserted in the binding, or only the cord *e*, it is only necessary to stitch it at the point shown by the line x in Figs. 4 and 5; but when a cord is required at the edge, and a broad binding is used, stiching will generally be required at the points *x* and *y*, the same as when two cords are used, though if a narrow binding be used, and the edges are turned in far enough, one line of stitching will suffice. The guide, when applied to a sewing-machine, will stand in the position shown in Figs. 1, 2, 3, relatively to the horizontal bed of the sewing-machine, which is indicated by Figs. 1 and 3 by the line f f, and will be provided with a plate i, through which to insert a screw, to attach it to the bed f f.

One great advantage of this guide is that it allows strips of raw-edged material, without a selvedge, to be used for binding purposes. Another is, that it enables cords to be put in at the edges of
35 the binding, as well as at the fold thereof, which, I believe, can be done by no other guide in use.

I do not claim the single guides as formed by the bends a b and and a b^1 for turning in the edges of the cloth singly, as those are like the guides of S. P. Chapin, as claimed by him in his patent hereinbefore named.

But I claim as new and my invention—

The compound guide herein described, composed of the two simple guides a b and a b^1, combined and arranged in any way substantially as herein described, to fold and at the same time turn in the two edges of a strip or piece of cloth or other material.

ALEXANDER DOUGLAS.

Witnesses:

O. D. MUNN.

S. H. WALES.

Endorsed: Rec'd and filed April 10, '56. L. T. W.

Before and after the grant of said letters patent I used the invention described therein largely in our business. I made several forms of said invention, which are specifically claimed in the reissued letters patent upon which this suit is brought. I used said invention very largely in my business of a skirt manufacturer, which I carried on for many years in the city of New York, in the firm of Douglas & Sherwood. According to my experience the invention described in said letters patent is one of very great utility. Prior to my invention it had been the practice to turn by hand bindings which were made of raw-edged material, for the purpose of using the same upon the edges of garments. My invention permitted the same work to be done automatically in connection with the sewing-machine, and increased the speed of such work at least five-fold. One girl, with a sewing-machine provided with one of my folding guides, could bind or band as much work as five or six could do without the use of such guide.

36 During the original terms of said letters patent I made earnest endeavors to protect the same in the courts, and was uniformly successful. I brought many suits at law in the circuit court of the United States for the southern district of New York founded upon said letters patent. The names of the several defendants in said suits were as follows:

M. A. Kursheedt, J. Spitzer & E. Lowenstein, Metz & Rosenbaum, Robert Leland, B. Luffler, S. Trischet & J. Bevan, Charles Pierce, and William Campbell. All of these defendants, except Pierce and Campbell, submitted to my rights under said letters patents, and took licenses in the following form:

Article of agreement, made and concluded this —— day of ——, in the year of our Lord one thousand eight hundred and sixty-three, by and between Alexander Douglas, of English Neighborhood, in the county of Bergen, and State of New Jersey, and Samuel S. Sherwood, of Acquackanonck, in the county of Passaic, and State of New Jersey, parties of the first part, and ——, part— of the second part, witnesseth:

Whereas the United States of America did, on the fifth day of Oc-

tober, in the year of our Lord one thousand eight hundred and fifty-eight, grant letters patent to the said Alexander Douglas, then of the city of New York, for an improvement in folding guides; and whereas the said Alexander Douglas did by an instrument of writing, under his hand and seal, and bearing date the 21st day of August, 1863, sell and convey to the said Samuel S. Sherwood one equal undivided half part of the said invention, as secured by the said letters patent; and whereas the said part— of the second part is desirous of using the said folding guide in his manufactory:

Now, therefore, the said parties to this agreement do mutually and severally agree as follows:

The said parties of the first part, for and in consideration of the sum of fifty dollars to them in hand paid, the receipt of which is by them hereby acknowledged, agree to grant and do hereby grant to
37 the said part— of the second part, their license and privilege to use the said folding guide in the manufactory of the said part— of the second part in —, and in no other place or places, and to make the same for — use only, to the full end of the term for which the said letters were granted or may be reissued, subject, nevertheless, to the conditions and restrictions hereinafter stated; and the said parties of the first part further agree to furnish to said part— of the second part, at his request, and upon reasonable notice, a stamp for each of as many folding guides as the said part— of the second part may require in — business, which stamp shall indicate the date at which said letters patent were granted, and which shall be properly constructed to be affixed to the said folding guides, upon payment by the said part— of the second part to the said parties of the first part of the further sum of five dollars for each of the stamps so used, as a compensation for the use of each folding-guide, over and above the sum of fifty dollars above named.

And the said part— of the second part, hereby acknowledging the full force and validity of the aforesaid letters patent, agree, in consideration of the hereinabove stated premises, to pay to the said parties of the first part, in addition to the sum of fifty dollars above named, the further sum of five dollars, as a further consideration and compensation for the privilege of using, for each of the said folding guides used by the said part— of the second part, during the term for which the said letters patent were granted, and to affix to each of the said folding guides, before using it, a stamp indicating the date of the patent, and obtained from the said parties of the first part, as above stated, and to pay to the said parties of the first part the sum of five dollars on each of the said stamps on obtaining them as aforesaid.

And it is further understood and agreed by and between the said parties to this agreement, that if the said part— of the second part shall, at any time during the term for which the said letters patent were granted, use in — factory any such folding guide or
38 guides, without having first paid to the parties of the first part the sum of five dollars as an additional compensation for the right to use the same, or without having obtained from the said parties of the first part a stamp, indicating the date of the afore-

said patent, for each of the said folding guides, and affixing the same thereto; or, if the said part— of the second part shall, during the said term, use such folding guides elsewhere than at — factory, or sell, or loan, or in any way furnish them to others to be used, whether stamped as aforesaid or not, the license hereby granted by the said parties of the first part to the said part— of the second part to use the said invention shall be utterly null and void, and the said party of the second part shall forfeit whatever amount — shall have paid to the said parties of the first part on that account; and the said part— of the second part shall also in that case be deemed guilty of infringing said patent by whatever manufacture, use, or sale — may have made of the said folding guides.

In testimony whereof, we, the said parties to this agreement, have hereunto set our hands and seals, the day and year first above written.

Signed, sealed, and delivered, being first duly stamped, in presence of us.

The action against said defendants, Pierce & Campbell, was brought on for trial before Mr. Justice Shipman and a jury on the 13th day of April, 1864, and the defendants not appearing, an inquest was taken and verdict rendered by the jury for the sum of five hundred dollars, upon which judgment was entered.

The following is a transcript from the record of the clerk of said court of the proceedings upon said trial, to which original record, I here, for greater certainty, refer:

WEDNESDAY, *April* 13, 1864.

The court meets pursuant to adjournment, and is opened by proclamation.

Present: Hon. Judge Shipman.

39 ALEXANDER DOUGLAS *et al. vs.* CHARLES PEARCE *et al.*

On motion of Mr. How, ordered inquest.

Jurors sworn: Frederick Olmstead, Peter Berg, Ledyard Avery, Bernard Crawford, Edward Moore, David Bedell, Godfrey Bierns, George W. Todd, Edward W. Ketchum, Thomas Clauson, Joseph McGrelly, F. Reinhir.

Mr. How opens the case on the part of the plaintiffs.

Evidence for the plaintiffs: Melissa Warren, George H. Wooster, Alexander Douglas, Charles P. Benedict, sworn.

The court thereupon charge the jury, who retire in charge of an officer duly qualified to attend them, and, on their return, say that they find a verdict for the plaintiffs in the sum of five hundred dollars, and so say they all.

During my ownership of said original patent, I also granted numerous other licenses to other persons in the same form above set forth. The names of such licenses are as follows: H. Hollingsworth, the Fancy Goods Manufacturing Company, Emanuel Bien, L. H. Mandlebaum, L. Dryfoos, L. S. Robbins, H. Boen, Herman

and Lautenbach, Bernard Loeffler, Elm City Co., G. Sidenberg, Thompson, Langdon & Co., G. P. Merwin, George H. Wooster.

40 I never granted any other licenses to any person or persons whatever other than those above named, nor have any person or persons other than those above named any right whatever to use the inventions described in the letters patent upon which this suit is brought, from, through, or under me.

On the 5th day of May, 1864, I was obliged, in order to pay a debt, to sell the original term of said letters patent, with others, to Messrs. Wheeler & Wiley, and thereafter had no interest whatever in said original term. I have been informed by Mr. Wheeler that no licenses whatever were granted by him or them during their ownership of the original term of said letters patent. Prior to the time that said original letters patent expired, I made application in due form to the Commissioner of Patents for an extension of the same; upon the same having been granted, I sold and assigned said extended letters patent to Mr. George H. Wooster, the complainant, and have now no interest whatsoever in the same.

I verily believe that I am the original and first inventor of each and all of the improvements and inventions described and claimed in the reissued letters patent upon which this suit is brought.

ALEXANDER DOUGLAS.

Sworn to this 15th day of Jan., 1875, before me.

[L. S.] T. J. MACVEY,
Notary Public, N. Y. City and County.

41 At a circuit court of the United States, held at the court-house in the city of New York, on the fourth day of April, 1879.

Present: Hon. Samuel Blatchford, circuit judge.

GEORGE H. WOOSTER
vs.
WILLIAM S. THOMSON, CHARLES H. LANGDON, & GEORGE C. BATCHELLER, and ALLEN E. HEWITT.

A motion for a preliminary injunction having been made herein, and it being represented that letters patent of the United States were issued to Alexander Douglas, of the city of New York, in due form of law, on the fifth day of October, 1858, No. 21695, for an improved folding guide for sewing-machines, and that the said letters patent were duly extended for seven years from the 5th day of October, 1872, and were duly assigned to George H. Wooster,

42 of the city of New York, and upon the 10th day of December, 1872, were reissued to said George H. Wooster in due form of law, and numbered 5180, and that the said defendants have infringed the same, and the same coming on to be heard, after hearing Frederick H. Betts, Esq., on behalf of said motion, and Joseph C. Clayton opposed, on motion of Betts, Atterbury, & Betts, complainant's solicitors—

Ordered that a preliminary injunction issue out of and under the seal of this court enjoining and restraining the defendant, Charles

H. Langdon, and his clerks, agents, servants, and workmen, from directly or indirectly making or causing to be made, using, or causing to be used, or vending to others to be used, in any manner, any improved folding guides for sewing-machines made or constructed as have been heretofore used by the defendants, containing or embodying any of the inventions described and claimed in said reissued patent, to wit:

1. A folding guide, the guiding surface of which is turned or folded at each edge, so as simultaneously to fold the material on each edge, substantially as described.

2. A folding guide, the guiding surface of which is turned or folded, so as simultaneously to fold the guided material at or near the centre and upon one or both edges, substantially as described.

3. A folding guide, the guiding surface of which is gradually turned or folded at each edge, so as simultaneously to fold the material on each edge, substantially as described.

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4. A folding guide, the guiding surface of which is gradually turned or folded, so as simultaneously to fold the material at or near the centre, and upon one or both edges, substantially as described.

5. A folding guide, substantially as described, provided with means, substantially as described, for attaching the same to and combining it with a sewing-machine.

6. A folding guide, substantially such as described, provided with a cord guide as and for the purposes set forth.

Or from infringing said letters patent in any way whatsoever.

(Signed) SAM'L BLATCHFORD.

44 CITY AND COUNTY OF NEW YORK, *ss.:*

——— ———, being duly sworn, says: He is a clerk in the office of plaintiff's attorneys, and that on the —— day of ———, 187–, he served the order hereto annexed on —— ———, attorney for defendants, by delivering a copy of the same to ——— ———, of the said ———, at —— office, No. —— ——— street, New York, and leaving the same with him, the said ——— ———.

——— ———.

Sworn to before me this —— day of ———, 187–.

——— ———.

(Endorsed:) Circuit court of the United States, southern district of New York. George H. Wooster *vs.* William S. Thompson *et al.* Order for injunction. Betts, Atterbury & Betts, complainant's solicitors, 20 Nassau st., New York. Due service of a copy of the within order is hereby admitted this —— day of ———, 187–. U. S. circuit court. Filed Apr. 7, 1879. John I. Davenport, clerk.

45 *Affidavit of Service.*

U. S. Circuit Court, Southern New York.

GEORGE H. WOOSTER
ag'st
WILLIAM S. THOMSON, CHARLES H. LANGDON, GEORGE C. BATCHELLER, & ALLEN E. HEWITT.

UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, } *ss.:*

Andrew Comstock, being duly sworn, says: That he is of mature age; that on the 27th day of March, 1879, at 72 Worth street, in said city, he served the annexed bill of complaint, affidavits, and notice of motion on Charles H. Langdon, one of the defendants in this cause, by delivering copies of the same to him personally, and leaving the same with him. He further says that he knew the person served aforesaid to be the person mentioned and described in said bill of complaint as one of the defendants in this action.

ANDREW COMSTOCK.

Sworn to before me, this 27th day of March, 1879.

46 [L. S.] GEO. M. BAKER,
Notary Public, New York County.

Endorsed: U. S. circuit court. Filed Apr. 7, 1879. John I. Davenport, clerk.

47 *Affidavit of Service.*

U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER *vs.* CHAS. H. LANGDON *et al.*

UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, } *ss.:*

Andrew Comstock, being duly sworn, says: That he is of mature age; that on the 8th day of April, 1879, at No. 70 Worth street, New York city, he served the annexed injunction on the said Chas. H. Langdon, one of the defendants in this suit, by delivering a copy of the same to him personally, and leaving the same with him, at the same time exhibiting to him this original. He further says that he knew the person served as aforesaid to be the person mentioned and described in said injunction in this action.

ANDREW COMSTOCK.

Sworn to before me this 10th day of April, 1879.

[L. S.] GEO. M. BAKER,
Notary Public, New York County.

48 [L. S.] The President of the United States to Charles H. Langdon, his clerks, attorneys, agents, servants, and workmen, Greeting:

Whereas it has been represented to us in our circuit court of the

United States for the second circuit and southern district of New York that letters patent of the United States were issued to Alexander Douglas, of the city of New York, in due form of law, on the fifth day of October, 1858, No. 21695, for an improved folding guide for sewing-machines, and that the said letters patent were duly extended for seven years from the 5th day of October, 1872, and were duly assigned to George H. Wooster, of the city of New York, and upon the 10th day of December, 1872, were reissued to said George H. Wooster in due form of law, and numbered 5180; and that you have infringed the same:

Now, therefore, we strictly command and enjoin you, the said Charles H. Langdon, and his clerks, agents, servants, and workmen,
under the penalties that may fall on you in case of disobedi-
49 ence, that you forthwith desist from directly or indirectly making or causing to be made, using or causing to be used, or vending to others to be used in any manner any improved folding guides for sewing-machines made or constructed as you have heretofore made, constructed or used the same, viz., folding guides, the guiding surface of which are turned or folded at each edge so as simultaneously to fold the material on each edge and containing or embodying the said invention granted by said letters patent, and the extension and reissue thereof, to wit:

1. A folding-guide, the guiding surface of which is turned or folded at each edge, so as simultaneously to fold the material on each edge, substantially as described.

2. A folding-guide, the guiding surface of which is turned or folded so as simultaneously to fold the guided material at or near the centre, and upon one or both edges, substantially as described.

3. A folding-guide, the guiding surface of which is gradu-
50 ally turned or folded at each edge, so as simultaneously to fold the material on each edge, substantially as described.

4. A folding guide, the guiding surface of which is gradually turned or folded so as simultaneously to fold the material at or near the centre, and upon one or both edges, substantially as described.

5. A folding guide, substantially as described, provided with means substantially as described, for attaching the same to and combining it with a sewing machine.

6. A folding guide, substantially such as described, provided with a cord guide as and for the purposes set forth.

Or from infringing said letters patent in any way whatsoever.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 8th day of April, 1879.

[L. S.] JOHN I. DAVENPORT, *Clerk.*

[L. S.] BETTS, ATTERBURY & BETTS,
20 *Nassau Street, N. Y., Complainant's Solicitors.*

51 Endorsed: I hereby certify that the within writ was served as appears by affidavit of Andrew Comstock, annexed hereto. Louis F. Payn, U. S. marshal. New York, April 16, 1879. I hereby depute Andrew Comstock to serve the within writ. New

York, April 8th, 1878. Louis F. Payn, U. S. marshal. U. S. circuit court. Filed Apr. 17, 1879. John I. Davenport, clerk.

52 U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER
vs.
WILLIAM S. THOMSON, CHARLES H. LANGDON, GEORGE C. BATCHELLER, and ALLEN E. HEWITT.

The clerk will please enter my appearance as solicitor and of counsel for the defendants in the above-entitled cause.

Dated N. Y., May 3, 1879.

Resp'y,

J. C. CLAYTON,
7 Warren St., N. Y. City.

To JOHN I. DAVENPORT, Esq., clerk of the U. S. circuit court, southern district of N. Y.

Endorsed: U. S. circuit court, southern dist. of N. Y. In equity. George H. Wooster *vs.* William S. Thomson *et als.* Notice of
53 appearance. J. C. Clayton, 7 Warren street, N. Y. city. U. S. circuit court. Filed May 5th, 1879. John I. Davenport, clerk.

54 *Rule Pro Confesso.—No Answer Filed.*

United States Circuit Court, South. Dist. of New York.

GEORGE H. WOOSTER
vs.
WILLIAM S. THOMSON & CHARLES H. LANGDON.

Betts, A. & B., J. C. Clayton.

The bill of complaint herein having been filed March 26, 1879, and process having been duly issued and served upon the defendants, and the defendants having failed to file any answer herein, although the time for so doing has expired:

Now, on motion of Betts, Atterbury & Betts, complainant's solicitors, ordered that the bill of complaint herein be taken *pro confesso* as against said defendants for want of any answer filed. June 10, 1879.

55 U. S. Circuit Court, South. Dist. of New York.

GEO. H. WOOSTER *vs.* WM. S. THOMSON *et al.*

Please take notice that on the 31st day of July, 1879, at 11 o'clock a. m. of that day, or as soon thereafter as counsel can be heard before Hon Samuel Blatchford, at the United States circuit court rooms in this city, we shall make a motion, based on the papers filed herein and on the rule entered in the equity rule-book of this court, on the 10th day of June, 1879, taking the rule "*pro confesso*" for want of

any answer filed by defendants, that the court grant a decree as prayed for in said bill of complaint herein.

Y'rs, truly, BETTS, ATTERBURY & BETTS,
Compl't's Sol'rs.

To J. C. CLAYTON, Esq., *Def'ts' Sol'r.*

56 (Endorsed:) U. S. circuit court, S. D. of N. Y. Geo. H. Wooster *vs.* Wm. S. Thomson *et al.* Notice of motion for decree. Betts, Atterbury & Betts, compl't's sol'rs, 20 Nassau St., N. Y. Service of within notice of motion is hereby admitted. July 29, 1879. J. C. Clayton, def'ts' sol'r. U. S. circuit court. Filed Aug. 2, 1879. John I. Davenport, clerk.

57 U. S. Circuit Court, South. Dist. of New York.

GEORGE H. WOOSTER *vs.* WILLIAM S. THOMSON *et al.*

CITY AND COUNTY OF NEW YORK, *ss:*

SAM'L R. BETTS, being duly sworn, says:

I am familiar with the above case, & have examined the entries relating thereto in the books of the clerk of the circuit court of this district.

Those entries show that the bill of complaint, notice of motion, & affidavits were filed in the clerk's office March 26, 1879, & subpœna issued on that day; on Apr. 7 an order for injunction against Charles H. Langdon, one of the def'ts, was filed; on Apr. 7 the subpœna and injunction, with proof of service on C. H. Langdon of both, were filed.

On May 5, 1879, the entry reads: "Entered appearance of def'ts by J. C. Clayton." There is no other later entry on the equity docket in this case.

The defendant's answer was due June 2 1879. There is no
58 entry to indicate its having been filed on that day or since.

On the 10th day of June, 1879, I entered a rule in the equity rule book, in the clerk's office of the circuit court, taking the bill of complaint "*pro confesso*" as against the defendants, for want of any answer filed. More than thirty days have elapsed since that date, & notice of application for a decree has been served on J. C. Clayton, who appeared for defendants, since the expiration of that thirty days.

SAM'L R. BETTS.

Sworn to before me, this 31st day of July, 1879.
JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

(Endorsed:) U. S. circuit court, south. dist. of N. Y. Geo. A. Wooster *vs.* William S. Thomson *et al.* Affidavits on motion
59 for decree "*pro confesso.*" Betts, Atterbury & Betts, compl'ts' sol'rs, 20 Nassau St., N. Y. U. S. circuit court. Filed Aug. 2, 1879. John I. Davenport, clerk.

60 At a stated term of the circuit court of the United States for the southern district of New York, held in and for the said district, at the court-rooms in the city of New York, on the — day of —, 1879.

Present: Hon. Samuel Blatchford, circuit judge.

GEORGE H. WOOSTER
vs
WILLIAM S. THOMPSON, CHARLES H. LANGDON, GEORGE C. BATCHELLOR, & ALLEN E. HEWETT, composing the firm of Thomson, Langdon & Co. } In Equity.

This cause having come on to be heard at this April term of this court upon the bill of complaint & filed papers herein, & upon the rule entered in the equity rule book of this court on the 10th day of June, 1879, taking the bill herein "*pro confesso*" for want of any answer filed by the defendants within the time limited for
61 filing such answer, & more than 30 days having elapsed since the entry of said rule "*pro confesso*," & notice of this application having been served on J. C. Clayton, who filed appearance generally as solicitor for defendants, now, on reading and filing such notice, and the proof of service thereof, and after hearing counsel, and after due proceedings had, it is, upon consideration, ordered, adjudged and decreed—

That the letters patent of the United States issued to Alexander Douglas, of the city of New York, dated October 5th, 1858, No. 21695, for an improved folding guide for sewing machines, and extended for seven years from the 5th day of October, 1872, and assigned to George H. Wooster, of the city of New York, & reissued on the 10th day of December, 1872, numbered 5180, to said George H. Wooster, the complainant herein, are good and valid in law.

That the said Alexander Douglas was the first and origi-
62 nal inventor and discoverer of the invention described and claimed in said letters patent, and in the specifications annexed thereto, and that George H. Wooster, the complainant, is the exclusive owner of the said reissued letters patent No. 5180.

That the defendants William S. Thomson, Charles H. Langdon, George C. Batchellor, & Allen E. Hewett, & their said firm of Thomson, Langdon & Co., have infringed upon said reissued letters patent, and upon the exclusive rights of the complainant under the same, that is to say, by making, using, and vending to others to be used without right or license, certain folding guides substantially as described in said letters patent.

And it is further ordered, adjudged, and decreed, that the complainant do recover of the defendant the profits, gains, and advantages, which the said defendants have derived, received, or
63 made by reason of the infringement of the complainants patent, as set forth in the bill of complaint by any manufacture, use, or sale, and that said complainant do also recover any and all damages he has sustained by reason of any infringement of said letters patent by the defendants.

And it is hereby referred to Joseph Gutman, Jr., Esq., one of the

masters of this court, to take and state the amount of said gains, profits, and advantages, and to assess such damages, and to report thereon with all convenient speed. And the defendants are hereby directed and required to attend before said master from time to time as required, and to produce before him such books, papers, and documents as relate to the matters at issue, and to submit to such oral examination as the master may require.

64 And it is further ordered, adjudged, and decreed, that a perpetual injunction issue out of and under the seal of this court, enjoining and restraining the defendants and their associates, clerks, agents, servants, and workmen from, directly or indirectly, making or causing to be made, using or causing to be used, or vending to others to be used, in any manner, any folding guides made or constructed as have been heretofore used by the defendant, containing or embodying any of the inventions described and claimed in said patent, or from infringing said letters patent in any way whatsoever.

And it is further ordered, adjudged, and decreed—

That the complainant do recover of the defendants his costs of this suit, and that the question of increase of damages and all further questions be reserved until the coming in of the master's report.

SAM'L BLATCHFORD.

65 Endorsed: U. S. circuit court, southern district of New York. Geo. H. Wooster *vs.* William S. Thomson *et al.* Decree. Betts, Atterbury & Betts, complainant's solicitors, 20 Nassau St., New York. Due service of a copy of the within decree is hereby admitted, this — day of ——, 187–. U. S. circuit court. Filed Aug. 2, 1879. John I. Davenport, clerk.

66 Circuit Court of the United States, Southern District of New York. In Equity.

GEORGE H. WOOSTER
vs.
WILLIAM S. THOMSON, CHARLES H. LANGDON, GEORGE C. BATCHELDER, and ALLAN E. HEWITT, comprising the firm of Thomson, Langdon & Co.

Proofs taken under decree for accounting before Joseph Gutman, Jr., master.

N. Y., *Oct. 14th*, 1879—11 a. m.

Examination adjourned to Oct. 21st, 1879, at 2 p. m.

JOSEPH GUTMAN, JR., *Master.*

OCT. 21ST, 1879—2 p. m.

Examination adjourned to Oct. 27th, 1879, at 2 p. m.

JOSEPH GUTMAN, JR., *Master.*

67 N. Y., *Oct. 27th*, 1879—2. p. m.

Present: Mr. Betts, counsel for complainant, and Mr. Clayton, counsel for defendants.

WILLIAM A. NETTLETON, produced under the decree, being duly sworn, deposes and says:

I have here and produce a list of the folding guides acquired and used by the defendants, which I believe to be correct.

The following are the dates. All of them were purchased of the Wheeler & Wilson Manufacturing Co., at Bridgeport:

On January 19th, 1877	6
March 14th, 1877	3
March 21st, 1877	2
March 26th, 1877	1
April 4th, 1877	1
July 8th, 1877	2
July 9th, 1877	1
February 9th, 1878	2
May 23, 1878	1
June 5th, 1878	1
July 26th, 1878	3
November 22d, 1878	1
January 31st, 1879	1
February 22d, 1879	1
March 5th, 1879	1

We have had seven different widths of these folding guides; practically we don't use but three.

They were used for turning strips of various material for patent corsets.

Of the 25 enumerated, I don't think we have any on hand. I don't know, because we discontinued the use of them when the injunction was served; of some we used the steel plates for other purposes. Some we brought here. These folders are not used in connection with sewing machines. The strips, after being folded, were sewed on to the corsets. They were folded in lengths of, say 20 feet,
68 then cut in pieces and sewed on the corsets with a sewing machine. These guides, with the heaviest material we used, would last but a very short time. I have known a folder to be brought to me as worn out within less than a month. With lighter materials they would last much longer. The last that we bought were made of steel, as the brass wore out so fast.

Adjourned to Nov. 6th, 1879, at 11 a. m.

N. Y., *Nov. 6th*, 1879, 11 *a. m.*

Present: Counsel as before.

Defendants produce, in response to the request of the complainant, a statement of the number of corsets manufactered by them up to April 9th, 1879, the date of injunction, in the manufacture of which such folding guides were used. Also a statement of the num-

ber of yards of material folded with such guides up to the same date for such corsets, as follows:

Style	G.	8,436	60 yds. per doz.	506,160
	H.	5,847	70 " " "	409,290
	F.	1,935	71 " " "	137,385
		16,218		
All others		2,539	say 65 yds	165,035
Total		18,754 doz.		Total yds. 1,217,870

The quantity given is the extreme limit. It was probably less.

Cross-examined by Mr. CLAYTON:

(Witness illustrates the method in which the guides were used.)

We used only one reel.

(Model produced and explained.)

It was used by one girl only; she was paid; the maximum was four dollars a week; when she began it was less; I will get from the books the total amount of wages paid to her; the capacity in yards with that reel was from three thousand five hundred to
69 four thousand yards per day, without crowding, which would be binding enough for fifty to sixty dozen corsets.

Q. State whether or not defendants had at any time in use more than one folder at any one time.

(Objected to, as immaterial. Objection overruled.)

A. We have never used but one folder at a time.

Q. Explain how it was that respondents had so large a number of folders and yet, as you say, used only one at a time?

A. In the first place we required different widths for the same corset; in the second place we used variations of the same width until we were satisfied with the appearance and use; this is the first corset ever made in the factory, showing the width of what we call narrow strips.

(Witness produces a corset.)

That was found too wide, and we made three widths before adopting the regular width afterwards used. Here are two of the three widths, one made January 8, 1877, and the other March 15, 1877.

(Witness produces two corsets.)

We at last settled on the width which we now use, which is represented by the corset I now produce.

(Witness produces another corset.)

This variation in width caused the difference in folders; another reason that we used so many was in the effort to save cloth; we varied as shown in the three strips produced by me.

(Witness produces three strips.)

I can't state accurately how long we were experimenting befsre we settled on the width now used—not less than three months;
70 during the first six months we made five thousand and seventeen dozen corsets; these strips of material produced by me are samples of some of the material used by us; the strips on the corsets are actual samples of the lighter materials; strip No. 1 is a sample of the medium weight; there was largely used a much heavier jean than any of those there; the heavier the jean the more rapidly it would cut away the metal of the folder; the strain on the folder comes all on the lower corner; when the corner gives way the folder must be repaired or thrown away; this sample shows a folder broken away at the corner.

(Produces a folder so broken.)

I have no means of giving the length of time that a folder could be used; I know that the folder which I have produced would not last 24 hours with the heaviest jean; the strain is so heavy that I have, myself, often seen the strip tear in two on passing through the folder; we were obliged to give up our best jeans because we could not work them satisfactorily through these folders; we used no other kind of folders before we used these; we have used folders turning one edge of the cloth, like the sample now produced by me, before these folders.

(Witness produces sample.)

By Mr. BETTS:

The time of the one girl was exclusively employed on the folders when that work was required; sometimes on other goods; I can give an approximate idea as to how much of her time was employed on the folders and how much on other work from the books; some of these guides were thrown aside as soon as a more suitable width was adopted; I can't tell how long they were used before thrown aside; all the rest, so far as I know, were used till worn out or stopped by the injunction; our season of manufacture extends over
71 the whole year, with the exception of, perhaps, two months—partly before and after New Year, partly at the end of six months; we have two seasons of manufacture; one in winter and spring, the other in late summer and autumn; the season refers to the whole business; we have no particular season for anything; the seasons are based upon the course of trade and supply on hand.

Adjourned to November 11, '79, at 1 p. m.

N. Y., *November* 11, 1879, 1 *p. m.*

Present: Counsel as before.

GEORGE H. WOOSTER, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the

truth, in the matter of controversy herein, and being examined by Mr. BETTS, counsel for complainant, deposes and says as follows:

I am the plaintiff in this case; I am the owner of the letters patent in the suit; I have owned the patent since its extension, 24th of September, 1872; I do not make or sell folding guides described in the patent; I have never done so; I have depended upon license fees for my compensation for the use of the patent; I have been in the habit of granting licenses since the year 1872; I have had an established rate of license since that time; at first the license was $100 a year for one guide; that rate was continued but for a short time, when it was reduced to $50 a year for one guide, with a commutation rate if parties wishing to use paid their money before commencing to use, so that I might have the benefit of the use of the money in advance; I mean a commutation rate where more than one guide was used, but there was no commutation rate unless the money was so paid in advance; if not so paid, the rate has been $50 for each guide used or commenced to be used or kept on hand.

72 (Defendant's counsel objects to so much of the testimony, "or kept on hand," as immaterial.)

The commutation rates have been $100 a year for three guides, $150 a year for five guides, $250 per year for ten guides, $500 twenty guides, and $1,000 per year for more than twenty guides.

I have granted over 100 licenses at rates as before mentioned as required. Among others Clark & King, Jackman & O'Hara, A. N. Luchs, John Lacey, Morrison, Herriman & Co., and a large number of others. The license fee has not been dependent upon the amount of use of the guides, as the license fee has been payable in advance at the commencement of use, and if the guides have only been used one day the license fee has been previously due.

As I understand it, no licensee has used continuously, and some of them, notably, manufacturers of ladies' suits, have complained that they were obliged to pay the same license fee for a month or six weeks' use in the spring as manufacturers of fancy goods, who use the greater part of the year; but they have all acquiesced in paying the established license fee for the whole year, when they have actually used it but a few weeks in the spring. The license fee is for any use not exceeding a year. I have a form of licenses, as I have ordinarily used them for the last two years, which I produce. They are similar in form to those used before, but with some verbal alterations.

(License offered in evidence, and marked "Exhibit License.")

I have looked at the list of guides made and used by the defendants as given in the evidence of Mr. William A. Nettleton, and find that the established license fee thereon, from the date of commencement, January 19, 1877, to April 9, 1879, amounts to $2,900. I present a detailed statement of the computation.

73	January 9th, 1877.	6	guides, one	year		$300 00
	" 1878.	6	"	"		300 00
January 9th, 1879.	6	guides, one	year			300 00
March 14th, 1877.	3	"	"			150 00
" 1878.	3	"	"			150 00
" 1879.	3	"	"			150 00
" 21st, 1877.	2	"	"			100 00
" " 1878.	2	"	"			100 00
" " 1879.	2	"	"			100 00
" 26th, 1877.	1	"	"			50 00
" " 1878.	1	"	"			50 00
" " 1879.	1	"	"			50 00
April 4th, 1877.	1	"	"			50 00
" " 1878.	1	"	"			50 00
" " 1879.	1	"	"			50 00
July 8th, 1877.	2	"	"			100 00
" " 1878.	2	"	"			100 00
" 9th, 1877.	1	"	"			50 00
" " 1878.	1	"	"			50 00
Feb. 9th, 1878.	2	"	"			100 00
" 1879.	2	"	"			100 00
May 23d, 1878.	1	"	"			50 00
June 5th, 1878.	1	"	"			50 00
July 26th, 1878.	3	"	"			150 00
Nov. 22d, 1878.	1	"	"			50 00
Jan. 31st, 1879.	1	"	"			50 00
Feb. 22d, 1879.	1	"	"			50 00
March 5th, 1879.	1	"	"			50 00
						$2,900 00

I had a large experience in the used guides covered by this patent, derived from their use in the manufacture of fancy goods, such as ruffles, ladies' collars, &c.

Compared with hand-work the advantage is very great, both as regards nicety of work and saving of labor. In manufacturing myself I put up most of my goods in six-yard pieces, and I found that I could, by using one of the forms of folding guides described in the patent in question, perform work for one cent what it would
74 cost five cents to do by hand; that is to say, we paid one cent for binding a piece of ruffle six yards long that we would be obliged to pay five cents for if done by hand—there being a saving of four cents per piece of six yards in using the patented folding guide.

The work done by the defendants as shown on the corsets marked "Exhibit on Accounts" has one less fold, namely, the fold on the centre, and consequently required about 25 per cent. less labor to fold it by hand. I consider three cents per piece of six yards, or half a cent per yard, would be a fair estimate of the difference in favor of work done by the folding guide over hand-work. But in no case can the work be done by hand with equal nicety, nor do I

think it could be done by hand to make salable goods, compared with those now offered in the market. The saving on the number of yards, as testified to by Mr. William A. Nettleton as having been made by the defendants, 1,217,870 yards, would amount to $6,089.35. There was no other way known by me to do work like that done by the defendants, except in the use of another patent owned by me, which consisted of a folding guide, folding one edge in combination with a device for pressing said fold to an edge, and then passing said folded strip through a narrower folder, folding the other edge, and pressing said fold by a pressing device. I produce a copy of the patent in question.

It is offered in evidence and marked Exhibit Robjohn Patent 6308.

Adjourned to November 12th, 1879, at 2 p. m.

Nov. 12, 1879—2 p. m.

Examination of WILLIAM A. NETTLETON continued:

The total amount paid up to April 9, 1879, to the operator who used the folding guide (estimating, of course, part of the month of April, as we paid by months) was $345.99. There is no
75 record anywhere that will enable me to do more than estimate the proportion of the time occupied with the folding guides. She began wholly inexperienced, and had to devote more time at first to a given amount of work than afterwards. Allowing three or four months to learn, the number of dozens made would properly indicate the time given to the work. Without looking at the figures I should say three-quarters of her time was given to this work as an estimate, and the balance to other work in the factory.

N. Y., *Nov. 15th*, 1879—2 p. m.

Present: Counsel as before.

Cross-examination of the witness, WOOSTER, by Mr. CLAYTON:

1 X Q. Was the Robjohn patent, put in evidence by you, declared invalid by any United States circuit court?

A. No.

2 X Q. Has it ever been declared valid by any United States circuit court?

A. It has been the subject of several suits, said suits having been settled and licenses taken under the patent, the defendants consenting that a decree should be granted.

3 X Q. Has the court ever passed upon the validity of the Robjohn patent, upon proofs, pleadings, and argument?

A. No; I think not; because infringers have always settled before it reached that point.

4 X Q. In what, if any, contested case has any United States circuit court sustained the validity of the patent in suit?

A. Wooster *v.* Seidenberg, in circuit court for southern district of New York, and the patent has been before that court in a number

of other cases, the details of which I cannot now state without referring to papers.

76 5 X Q. Have you never granted commutation rates unless paid in advance of infringement?

A. I think I have in several instances, where I have notified parties that they were infringing, and where they had settled without suit.

6 X Q. Have you never granted commutation rates after suit brought?

A. I don't think I have; I don't remember now that I have, although I have always been in the habit, even after I had sued a person, of offering reasonable terms, because when a man offers to do what I think is right, I am always willing to meet him more than half way; besides that, I dislike very much to be obliged to attend the details of a patent suit; besides, it is expensive.

7 X Q. What are the lowest rates at which you have granted licenses of the patent in suit, and to whom?

A. My rates have been uniform, and they are stated in my direct examination.

8 X Q. Have you not occasionally granted licenses at very much lower rates than stated?

A. I don't remember; never knew of any, except in one or two cases; where a sewing-machine operator would wish a license for six months, I granted it for $25, and in one case where a girl who was an operator, came to me to renew, saying she only had ten dollars, I told her I would not charge her anything, but gave her no license.

9 X Q. Have you not stated in circulars and otherwise to these defendants, and others, that your terms for a license were $50 a year for one guide; $100 a year for three guides; $150 a year for five guides; and $250 a year for ten guides; and $500 a year for twenty guides?

A. I have no doubt that I have so stated, but not in circulars, and I so stated upon my direct examination in this case; but those are commutation rates and not obtainable after I had been put to expense, or after the infringement had continued a long time, causing me to lose interest upon the money which should have been paid in advance.

77 10 X Q. Have you ever granted any licenses to corset manufacturers to make strips such as I would buy of defendants?

A. Yes; I licensed Crotty & Landehaur to use five guides; they used them to make strips, and they paid $150 a year for them in advance.

11 X Q. Do you keep books of account in which you have kept an account of the license fees charged and collected under said patent in question?

A. No.

12 X Q. How, then, do you determine accurately whether or not a given manufacturer has paid license, or how much he may have paid you for license.

A. My rule has been so strict in regard to terms, and I do not suppose I could remember one-half the names of my licenses without they were called to my mind especially.

13 X Q. Have you not in your possession or control some book or memorandum, list or lists showing the names of all persons who have paid you licenses under said patent, with the amounts severally paid?

A. No.

14 X Q. Do you mean that you have no other accounts covering the licenses paid except what you carry in your head?

A. When I receive a check I generally enter it on the stub of my check-book, with the name of the party paying it and the amount paid; that is sufficient for my purpose.

15 X Q. Please produce as accurately as you can a list of all the parties who have paid you license under this patent, setting forth the amount paid, the number of guides paid for, the purpose for which they were used, and the dates of payment?

A. I will furnish the master as full a list of the licensees, and what they paid, and how many they paid for, as I can before this case is closed.

16 X Q. Do you claim that the patent in suit covers the use of a single folder or guide which folds only one edge?

78 A. No.

17 X Q. Was it open to the public in the years 1877, 1878, and 1879 to use such a guide?

A. I should think that would be a matter for the courts to decide.

18 X Q. How long did you know of the use of such single guide?

A. I think I have known hemmers since about 1859 or 1860, in different forms.

19 X Q. By "hemmer" do you mean such a single guide as I have described?

A. I don't understand that you have described any.

20 X Q. 18th cross-question repeated.

A. Such guides as are inquired of, those folding on one edge, I have known in various forms since about the year 1859 or 1860.

21 X Q. If a licensee should break a folder during the year and substitute another one for it during the year, would you charge an additional royalty for the substituted one, provided he ceased to use the broken one?

A. Yes; unless it should be returned to me.

22 X Q. If a fire should consume a licensed guide and the licensee should procure another one in its place during the year, would you charge a license fee for the substituted guide?

A. I should do nothing but what would be right, just, and equitable; my licenses read that the licensees shall pay $50 for every guide that they shall have had on hand at any time during the previous year or during the extended term of the patent, if they fail to return them to me within 10 days of the time the license expires; but if I should be satisfied that a man's guides have been burned

up, I don't think I should insist upon his returning them, but should give him permission to replace it with pleasure.

23 X Q. Explain what you meant by the words "by hand" in your direct testimony, when you estimated a saving per yard by the use of the patented device?

79 A. By the use of the patented device a flat strip of raw-edged goods is entered in an inclosed channel-way, the configuration of the metal forming the guide, causing the raw edges of the strip to be folded over on each edge simultaneously, enabling a person entirely unskilled by its help to fold on each edge as much goods as can be pulled through said guide. In order to do this by hand, that is, without the use of a guide, it is necessary to fold down first one edge and then the other, consuming much time, making very unsatisfactory and, if the hands are not perfectly clean, very dirty work. And unless much time is consumed, even after a person has become very expert in folding, but a small amount of goods can be folded in a day. I have tried both ways, and I am satisfied my estimate is a fair one; and that is not the only saving. Folding my hand requires from 25 to 33⅓ per cent. more goods than the guide does, and, if I add that to my estimate of the saving obtained by the use of the guide, it will add some hundreds of dollars to the sum I have before mentioned.

24 X Q. How many yards a day of binding could be made a day by hand by one operator?

A. I do not think that any amount worth speaking of could be folded by hand with sufficient nicety to make a fold for corset strips, because hand folding is sure to be wavy and irregular, wide in some places and narrow in others; but such quantity as a person could make, using great care, might possibly amount to, I should say, 150 yards a day.

25 X Q. Do you assume, in your tabulated calculation of royalties, that every guide bought by the defendants was chargeable with royalty from the date of purchase up to the end of the year 1879, at the rate of $50 dollars for each year for each guide?

A. I claim that my license fee is payable in advance, and I made up the statement on that basis.

26 X Q. Have not folded strips been sold in market, put up in rolls ready for use?

A. I have heard that they have, but do not know of my own knowledge.

80 27 X Q. What terms of settlement have you offered these defendants?

A. I think I offered them, before suit was commenced, the commutation rates for all they had used.

28 X Q. What offer of settlement was made with your knowledge and consent after suit was brought?

A. Mr. Betts wrote me that Thomson, Langdon & Co. had offered $500, which I declined; I do not now remember what sum he offered to take, with my consent or without, but hope and presume that it was a reasonable one.

GEO. H. WOOSTER.

Sworn to before me.

JOSEPH GUTMAN, JR., *Master, &c.*

Case on behalf of plaintiff closed.
Adjourned to November 24, 1879, at 11 a. m.

N. Y., *Nov.* 24, 1879, 11 *a. m.*

Present: Counsel as before.
Adj'd to Dec. 1, 1879, at 11 a. m.

N. Y., *Dec.* 1*st*, 1879, 11 *a. m.*

Present: Counsel as before.
Adj'd to December 4th, 1879, at 3 p. m.

81 Whereas certain letters patent of the United States, bearing date the 5th day of October, 1858, were granted to Alexander Douglas, of the city of New York, for an improved folding guide for sewing-machines, &c.; and whereas George H. Wooster, of said city, has, by assignment from said Alexander Douglas, become sole owner of said letters patent; and whereas said letters patent have been extended for seven years from October 5th, 1872, and reissued December 10, 1872, No. 5180;

And whereas John Doe, of the city, county, and of the State of New York, parties of the second part, are desirous of obtaining a license to use said folding guide:

Now, this indenture witnesseth, that the said George H. Wooster, party of the first part, for and in consideration and in case of the due and faithful keeping and performing of each and all of the conditions, agreements, and admissions hereinafter contained to be kept and performed by the said parties of the second part, has given and granted, and by these presents does give and grant, unto the said parties of the second part license to use one folding guide, containing the inventions described in said letters patent, for one year from the date hereof, at their place of business, No. —, 14th street, in the city of New York, and no longer and not otherwise or elsewhere, without written permission of said George H. Wooster, his executors, administrators, or assigns; that is to say—

First. The said parties of the second part, for their heirs, executors, and administrators, fully admitting and acknowledging the force and validity of said letters patent, and all reissues thereof, and the novelty of the invention therein described and claimed, covenant and agree to pay to the said George H. Wooster, as a patent fee or royalty, the sum of fifty $\frac{00}{100}$ dollars in lawful money.

Second. The said parties of the second part further covenant and agree that during the term of said letters patent they will not make, use, sell, lend, give away, or keep on hand any folding guide or guides containing any of the inventions described and claimed in said letters patent, without the written license of said party of the first part.

Third. The said parties of the second part further covenant and agree that they will not contest in law or equity, nor aid or assist, or advise others to contest in law or equity, the validity of the above-

described patent, or any reissue thereof; and that they will never refuse to pay the party of the first part the license fee, as set forth, if said patent, or any reissue thereof, should be litigated or contested at law or in equity by other parties.

Fourth. The said parties of the second part further covenant and agree to mark, stamp, or cast indelibly on each and every folding guide used the words, Patented October 5th, 1858; extended September 24th, 1872; reissued December 10th, 1872; licensed to John Doe only, or some intelligible abbreviation thereof.

Fifth. The said parties of the second part further covenant and agree that the said party of the first part, or his assigns, or his or their duly constituted agents, shall have the right and privilege and shall be permitted at any reasonable time or hour to visit and inspect the establishment of the parties of the second part, where said folding guides are, and inspect and count the same.

Upon the failure of the parties of the second part at any time faithfully to carry out and perform any or either of the said above-mentioned conditions and promises, the said party of the first part, his executors, administrators, or assigns, may revoke and annul this license, in which case this license and all rights and privileges of the parties of the second part herein shall forever cease and determine; but the said parties of the second part shall not be thereby relieved from any of the contracts or agreements on their part herein contained.

It is further distinctly understood and agreed between the parties as follows:

No folding guide shall be or is hereby licensed unless it shall be marked or stamped as aforesaid, and while it shall be so stamped or marked.

It is further distinctly understood and agreed that this license is a personal privilege of the parties of the second part only, and is not to be, and cannot be, assigned, transferred, divided, shared, apportioned, or used in connection with any person not named herein.

It is further distinctly understood and agreed that the parties of the second part have no right or title of any kind in any folding guide itself, which is hereby licensed; such guides are not lawfully made, nor is any property for sale of the same vested in the parties of the second part, nor can they be transferred so as to vest any right to use the same in any party not named herein; but upon the expiration of this license if the parties of the second part wish to discontinue the use of guide- covered by the claims of the above-mentioned patent, they will deliver to the party of the first part free of charge all the folding guides hereby licensed, and all they then have or have had in their possession; and if the parties of the second part fail to surrender all of said guides at or before the expiration of ten days from the termination of this license, the license fee for all said guides for the next ensuing year, at the rate of fifty dollars for the guide hereby licensed, and fifty dollars for each additional guide that may be or may have been in the possession of said parties of the second part, or either of them, during the term hereby granted, or during the excluded term of said letters patent, shall immediately

become due and payable, and the parties of the second part hereby agree to pay the same to the party of the first part without notice or demand.

In witness whereof, the parties above named have hereunto set their hands and seals this —— day of ———, 187–.

——— ———.

82 [Endorsed:] "Exhibit License." J. G., Jr. License to use the Douglas folding guide. To M-. ——— ———. For — year ——. Dated ———.

83 *Proofs on Part of the Defendants.*

WOOSTER *v.* THOMSON.

N. Y., *Dec.* 4, 1879, *at* 3 *p. m.*

Present: Counsel, as before.

G. ALBERTUS CLOSE, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. CLAYTON, says:

I am in the employ of Thomson, Langdon & Co., and have been ever since June, 1877; my principal business was cutting strips, superintending the strip department, which includes the folding machine; the strip passes between two wheels, and then across the plate where the folder is adjusted, then on the reel.

One folder at a time was used on a machine.

(Objected to as immaterial; overruled; exception.)

The largest number of folders I have had in my posssesion at one time is seven; we made in one day binding for seventy-four dozen corsets, using four folders, four different widths; about sixty-nine yards of material were used, which was a little more than the average; some of those folders wore out by use; in one case one wore out in a day; the material used on that one was a heavy jean; we used that material for about a year; the folder that broke, or wore out, I handed to the machinist, and he ordered others; Mary McConnell was the person who used the folders; she was the only one, unless she was out a day or so, and then somebody took her place; seven is the greatest number of different widths of folders used; Mr. Nettleton told me to stop the use; we then had seven folders in use.

(Counsel for respondents offers in evidence certified copy of letters patent granted S. P. Chapin February 19, 1856.

84 Also a certified copy of the original petition, oath, and application of Alexander Douglass in the matter of the original patent in suit, filed in the Patent Office, April 10, 1856.

Certified copy of patent granted to James S. McCurdy, Feb. 26, 1856.)

N. Y., *Dec.* 16, 1879, 2 p. m.

Present: Counsel for defendants.

Examination adjourned to December 17, 1879, at 2 p. m.

JOSEPH GUTMAN, JR., *Master.*

N. Y., *Dec.* 17, 1879, 2 p. m.

Present: Counsel as before.

Counsel for defendants inquired whether the witness, Wooster, had produced the list called for in the 15th cross-question on the 15th of November.

Counsel for complainant states that Mr. Wooster expects to do so as promised before the case is closed, but that the same is not yet prepared.

Defendants' counsel states that he wishes to have the list called for, and to continue the cross-examination of Mr. Wooster upon the information the list called for may disclose, and asks the master to require the production of the same at the next session.

The master states that he has no power to compel the production of the list asked for.

Cross-examination of the witness, CLOSE, by Mr. BETTS:

85 The folder I spoke of as worn out in a day was not mended and used again; after leaving the folder the material passed over the edge of the machine in such way as to crease it; it was not passed under pressure so as to crease it; the force of pulling it through the folder to the reel over the plate creased it; the force of drawing it through the folder over the plate creased it.

A reel has not always been used; goods are not wound on a reel before going through the folder.

X Q. Can you make a drawing showing the machine and how the goods passed to the reel?

(Objected to, the witness not being competent to make a drawing. Objection overruled; exception.)

A. I can, I suppose, with time and tools to do it with; I cannot do it here now; I haven't anything here to do it with; I could make a rough drawing.

X Q. Please do so.

A. I can't make a drawing of the whole machine without proper instruments; I prefer time and instruments to do it with; I can't do it now, even roughly, not to show the whole thing; I don't think I'll undertake any draugthing now at all.

X Q. Describe the machine and its operation; what was first done?

A. The materials were placed on the table, then passed over to another table where the folding machine is attached; they were then put between two pulleys where the strip was measured; from there it went across the plate of the machine through the folder, the folder being fast on the plate; drawn over the edge of the plate of the machine, it goes on a reel; the hand has as much to do with keep-

ing the goods tight as anything; one pulley was about 5 or 6 inches in diameter, the other about two; the two pulleys did not press very tight on each other; one pulley was on a spring; the reel is about 4 inches below the plane of the plate; that is the same arrangement we are using now; we used folders before we had that arrangement; I think they got it about three weeks after I went there to work, and have used it ever since. Before that the folders were screwed on a table and drawn through by a reel. We had seven folders before using this machine.

86 I remember injunction in this case being served; had no strips folded out of the factory by people after the injunction was served. We used some machines with single-edge folder; a boy then passed it through another single-edge folder and folded the other edge. The strip did not run from one folder into the other; it was taken off; was run through with a reel in the other folder also. We had this second folder specially constructed for us; I don't remember who made it; it was not made in the factory. The tongue of the folder was high enough to admit the folded edge; we ran different thicknesses through it; it would admit a thick strip or a thin one; I never examined it; I was in the strip department; had charge of it; never examined it as regards that spring; I can't tell on what principle it operated; the tongue was not arranged like the one in the guide shown me; I know because I have examined it enough to know how it was constructed on the side; it was not like that one as to the tongue. I think the guide now shown me is one of those used by us before the injunction; they were all very much like that; we had some made of steel; I think they differ in construction somewhat. The specimen now shown me is one of the single-edge folders used by us since the injunction.

(Both folders offered in evidence; marked Exhibits Single and Double Folder.)

We had the single folders made immediately on the service of the injunction.

G. ALBERTUS CLOSE.

Adjourned to Dec. 23d, 1879, at 2 p. m.

N. Y., *Dec.* 23, 1879, 2 p. m.

Adjourned to Dec. 29, 1879, 2 p. m.

87 N. Y., *Dec.* 29, 1879, 2 p. m.

Present: F. H. Betts, Esq., for complainant, and J. C. Clayton, Esq., for defendants.

The witness, Close, produces the machine used by defendants in connection with folding guides.

Adjourned till January 2, 1880, at 10 a. m.

N. Y., *Jan'y* 2, 1880.

Adjourned to day to be fixed.

JOSEPH GUTMAN, JR., *Master.*

N. Y., *January* 20, 1880, 4 p. m.

Present: Counsel for the respective parties.

CHARLES H. JACKSON, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy, on examination by Mr. CLAYTON, says:

I live in North Brookfield, Mass.; I am employed as a manufacturer of corsets; I am superintendent in a corset factory at present; I was in the employment of the defendants for seven months, beginning Jan. 1, 1877; I was in their corset factory at Bridgeport, Conn.; I am acquainted with a man by the name of Bruce, now at Troy, formerly of Clinton, Mass.—N. H. Bruce, I think—who was engaged from June, 1874, down to the present time in manufacturing and selling binding made from cut muslin, having both edges turned over. He charged twenty-five cents for a gross of yards for the manufacturing, as I have been told. In 1874 I went to Bruce's place in company with the foreman of Waterman & Mayer, with whom I was then employed. Bruce was at that time manufacturing and selling such binding, and his price then was twenty-four cents for a gross of yards. This was his price for manufacturing, exclusive of the cost of material. Bruce is still supplying Waterman & Mayer. I am now employed with Heilner & Strauss, of this city.

88 Mr. Nettleton ordered the first double-folder that was used by the defendants, at their factory in Bridgeport. I had superintendence of the entire works. The first one was simply a trial, but a failure; we used it only for a short time. Owing to the thinness of the brass of which it was made, it wore out too quick, and it was also a little too wide for our purpose.

We next got half a dozen of those folders. Mr. Nettleton thought it best to get half a dozen, because they wore out so quick. They were given into my charge after they came into the factory for use; we used only one at a time—only one width was wanted. One little girl was running it. We had two or three made, to experiment with, of other widths. I think constant use would wear them out in two weeks. In the slow way that we used them, I think they lasted two or three weeks. The folder was screwed on the table and the muslin was drawn through by means of a crank. After a month or two we ran two at once, occasionally, for a day or two. Generally we used only one at a time. There were many days when we did not use any.

C. H. JACKSON.

Sworn to before me.

JOSEPH GUTMAN, JR., *Master*.

Adjourned to Jan. 26, 1880, at 2 p. m.

N. Y., *Jan.* 26, 1880, *at* 2 *p. m.*

Examination further adjourned to February 9, 1880, at 2 p. m.

JOSEPH GUTMAN, JR., *Master*.

89 N. Y., *Feb.* 9, 1880, 2 *p. m.*

Present: Counsel as before.

JOSEPH MAYER, a witness of lawful age, produced on the part of defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy, on examination deposes and says:

Joseph Mayer; residing in Brooklyn; I am a manufacturer of corsets, and member of the firm of Waterman & Mayer. Have been manufacturing corsets for about ten years. We purchased binding materials that were folded on each side of the cloth, in various widths, from $\frac{7}{16}$ths up to $\frac{3}{4}$ inch, from the Fullerville Co., Clinton, Mass., we furnishing the cloth, and had it made of satine and also of coutil. We paid twenty-five cents a gross of 144 yards for folding and cutting. The material was folded on both sides. We bought this material of the Fullerville Company for 75 cts. a gross, already folded, since 1874. The width of this material was $\frac{7}{16}$ths or $\frac{1}{2}$ inch, either one or the other. Our firm employed a man named Charles H. Jackson; he was in our employ, I think, in 1874. These binding materials that I speak of were used for corsets only.

Cross-examination:

I do not know how the folding of the edges was done on the strips we had folded and purchased of the Fullerville Company.

JOSEPH MAYER.

Sworn to before me.

JOSEPH GUTMAN, JR., *Master.*

90 N. Y., *October* 19, 1880, 1 *p. m.*

Present: Counsel as before.

Counsel for defendants offer in evidence certified copy of letters patent 14283, granted S. P. Chapin, Feb. 19, 1856—Improvement in sewing guides.

It is marked Def'ts' Exhibit Chapin Patent.

(Objected to, as incompetent; admitted; excepted.)

Also letters patent to James S. McCurdy, 14322, July 26, 1856—Improvement in binding guides.

(Same objection, ruling, and exception.)

It is marked Def'ts' Exhibit McCurdy Patent.

Also copy of the petition, oath, and specification, as originally filed, of letters patent granted Douglass, Oct. 5, 1858.

It is marked Def'ts' Exhibit Douglass 1858 Patent.

Also photographs of the machine testified to by the witness Close, as having been used by the defendants in connection with the complainant's folding guide.

Marked Def'ts' Photograph Exhibit.

Mr. Wooster, in compliance with his answers to the 15th cross-question, produces a list of licenses and what they paid, and how many they paid for.

It is marked Exhibit List of Wooster in Answer to Cross-Q. 15.

Defendants closed.

Complainant's counsel offer in evidence a certified copy of the model in the matter of letters patent of S. P. Chapin, granted February 19, 1856.

It is marked Exhibit Chapin Model.

GEORGE H. WOOSTER recalled by complainant:

Q. Are you familiar with the hemmer described in the patent of S. P. Chapin, February 19, 1856.

91 A. I have seen it and examined it a great many times, and think I understand its operation. I am familiar with the binder described in the McCurdy patent of July, 1856. The Chapin device could not be used for folding strips of materials on one or both edges for use upon corsets, because in the Chapin device, in order to hold the single edges of cloth which is folded by it, it must be stretched at the same time it is folded, or the goods will spring back to its original shape; beside, the Chapin device is an uneven folder, not controlling the edges perfectly or embracing the goods required to be folded so as to keep the cloth flat and regular in form. By running the edge of a strip of cloth through either form of hemmer shown in Chapin model, it will, after passing through, be in an irregular or snarly form, because both edges of the strap are not controlled as is necessary to fold straps for a salable corset. The McCurdy device is a binder calculated and adapted to fold selvaged edged goods, such as ribbon and braid, and will fold the strip passing through it in the center only, and is, strictly speaking, a binder for producing the effect shown upon the corset produced by the defendant, where the edge is bound with tape, and cannot be used for folding raw edged strips of cloth either on one or both edges.

Q. Is either of the guides marked Exhibit Single and Double Folder, substantially like either the Chapin or the McCurdy device?

A. They are not.

Cross-examination:

X. Q. In the original application of Douglass, he used the following languge: "This guide is formed by combining and arranging as hereinafter described, two guides such as are described and claimed in the patent of S. P. Chapin, dated February 19, 1856;" also, "I do not claim that the single guides as formed by the ends *a b* and *a' b'* for turning in the edges of the cloth singly, as those are like the guides of S. P. Chapin, as claimed by him in his patent

92 hereinbefore named." Can you reconcile the statements of the patentee Douglass with the opinion expressed by yourself in your last answer concerning the Chapin patent?

(Objected to, as Douglass is not a witness here and his statements are not competent.)

A. As I understand the matters from letters read, written to the

Patent Office by Mr. Douglass or in his behalf, during the pendency of the original application for a patent, he claimed a guide having an inclosed channel way, which folded strips of raw-edged material upon both edges and in the centre, or upon both edges only; the examiner in the Patent Office, if I remember right, claimed that by putting two hemmers a certain distance apart, an arrangement might possibly be effected whereby two edges could be folded simultaneously; it was not claimed that it had been done, but that it might be done possibly, and Chapin's hemmer was mentioned in the correspondence, which was very voluminous—extending over two years and a half of time; I can only reconcile the statement mentioned by the counsel for the defendant with my statement by imagining that Mr. Douglass became tired of the controversy and yielded to the improper and unjust demands of the examiner, and wrote or caused to be written the words quoted.

Redirect:

Re-D. Is the Douglass binder nothing but two Chapin hemmers?
A. No, sir; it is something a great deal more than two Chapin hemmers could possible be.

Recross-examination:

Re-x. How much more?
A. It contains, in addition to a device for turning an edge, an inclosed channel way, which supports and embraces the whole width of the goods, instead of merely an edge thereof, and enables
93 a person to fold with mathematical precision a strip of goods in precisely the same width and form throughout his whole length.

GEO. H. WOOSTER.

Sworn to before me.

JOSEPH GUTMAN, JR., *Master.*

Adjourned to Oct. 28, 1880, at 2 p. m.

OCTO. 28, 1880, 2 *p. m.*

Adjourned to November 3, 1880, at 2 p. m.

Exhibition List of Wooster, in Answer to Cross-Q. —.

$100, Clark & King, 15 guides, January 3, 1877.
" " " " 1878.
" " " " 1879.
" Jacob Schoenhoff, 2 guides, July 2, 1877.
" " " " 1878.
" Louis Dryfoos & Co., 3 guides, July 18, 1878.
$50, Keoch & Simpson, 1 guide, June 7, 1877.
" " " " 1878.
$100, J. H. Hollyworth & Co., 3 guides, October 1, 1878.
" " " " 1879.
" " " " 1876.
" Fairchild, Hill & Co., " February 1, 1877.
" " " " 1876.

$150, V. Henry Rothschild, 5 guides, January 2, 1878.
$100, E. Smith & Co., 3 guides, July 13, 1875.
" Stern & Heilbun, 3 guides, May 1, 1874.
" " " " 1875.
" " " " 1876.
" W. M. Humphrey & Bro., 3 guides, October 1, 1874.
$250, Geo. P. Munn & Bro., 3 guides, October 5, 1872.
$300, 2 years, Roger, Wardrohe & Co., 5 guides, February 1, 1877.
$50, W. H. & A. D. Rome, 1 guide, January 1, 1876.
" E. Stone, 1 guide, April 1, 1877.
" " " " 1878.
$100, Roger, Wardrohe & Co., 3 guides, February 1, 1875.
$150, Stuell Manufacturing Company, 5 guides, January 1, 1876.
" " " " " 1877.
" Simeon Goodman & Sons, 5 guides, January 1, 1878.
" " " " 1879.
$50, Caldwell & Penny, 1 guide, June 28, 1877.
" " " 1878.
$100, Robert Hayward, 3 guides, March 1, 1876.
" " " 1877.
" " " 1878.
" Goldsmith & Plant, 3 ——, February 1, 1877.
" " " 1878.
" " " 1879.
94 $100, M. Nathan & Co., 3 guides, February 1, 1877.
" " " 1878.
" Kapp & Stox, 3 guides, January 17, 1878.
$150, Corthy & Lindhauer, 5 guides, May 1, 1875.
" " " 1876.
$50, Button & Dubois, 1 guide, November 22, 1875.
" " " 1876.
" " " 1877.
" " " 1878.
" A. Zillmacher, 1 guide, January 27, 1875.
" " " 1876.
" " " 1877.
" " " 1878.
" " " 1879.
$100, Uhlig & Freuchwanger, 3 guides, January 1, 1874.
" " " 1875.
" " " 1876.
" " " 1877.
" Otto W. Uhlig, 3 guides, January 2, 1878.
$50, Simon Stern & Co., 1 guide, January 1, 1877.
" " " 1878.
" " " 1879.
$180, S. Rothschild & Bro., 6 guides, January 15, 1878.
$100, Clark & King, 3 guides, January 15, 1876.
$50, Bach & Fuhet, 1 guide, March 4, 1875.
" " " 1876.
" John P. Jackman, 1 guide, May 1, 1875.

$100, Jackman & O'Hara, 3 guides, April 1, 1876.
" " " " 1877.
" O. Henry Rothschild, 3 guides, January 2, 1879.
$50, John W. Court, 1 guide, January 10, 1876.
" Hill, Moynan & Co., 1 guide, January 1, 1877.
$400, 4 years, Arnold, Constable & Co., 3 guides, November 20, 1875.
$50, Isador Kohn, 1 guide, June 6, 1875.
" " " " 1876.
" " " " 1877.
" B. L. Cohen, 1 " February 15, 1875.
" John S. Davis, 1 " October 15, 1875.
$100, E Stonell Weldon, 3 guides, January 1, 1875.
$50, A. M. Servino & Co., 1 " August 27, 1874.
" " " " 1875.
" Louis Sanders, 1 guide, April 1, 1874.
" Leopold Lomestein, 1 guide, October 6, 1873.
" " " " 1874.
$100, Enstein & Bernard, 3 guides, March 1, 1874.
" " " " 1875.
$50, A. Eisig, 1 guide, October 6, 1873.
" J. Kearney, 1 guide, January 1, 1877.
95 $100, H. Wallach & Son, 3 guides, October 5, 1877.
" G. Strauss & Co., 3 guides, April 1, 1874.
$100, E. & R. Finley, 3 guides, January 1, 1875.
" " " " 1876.
" Fisk, Clark & Flagg, 3 guides, January 1, 1876.
" " " " 1877.
$100, 1 year, R. Werner, 1 guide, October 5, 1872.
$50, Davis, Foster & Co., 1 guide, March 1, 1874.
" Ignatz & Stein, 1 guide, January 2, 1877.
" " " " 1878.
" " " " 1879.
$250, John F. Houdger, 10 guides, February 1, 1875.
$100, Klein & Hastin, 3 guides, March 15, 1874.
" " " " 1875.
" Helen Brusic, 3 guides, July 11, 1877.

N. Y., *November* 3, 1880, 2 *p. m.*

Present: Counsel, as before.
Case summed up.

Endorsed: U. S. circuit court. George H. Wooster ag'st Charles H. Langdon *et al.* List of licensees. Betts, Atterbury & Co., comp's sol'rs, 120 B'way.

96 UNITED STATES PATENT OFFICE.

GEORGE H. WOOSTER, of New York, N. Y., assignee of Susan A. Robjohn, administratrix of Thomas Robjohn, deceased.

Improvement in Apparatus for making Fluted Ruffles.

Specification forming part of Letters Patent No. 42404, dated April 19, 1864; Reissue No. 6308, dated February 23, 1875; Application filed November 23, 1874.

To all whom it may concern:

Be it known that Thomas Robjohn, now deceased, late of New York, in the county of New York and State of New York, did invent a new Improvement in Apparatus for Folding and Fluting Strips of Fabric; and I do hereby declare the following, when taken in connection with the accompanying drawings and the letters of reference marked thereon, to be a full, clear, and exact description of the same, and which said drawings constitute part of this specification, and represent in—

Figure 1, a vertical section of the principal parts of a fluting-machine, with the improvements; Fig. 2, a horizontal section of the same above the lower fluting-roller; Fig. 3, a transverse section of one kind of ruffle to be made by the machine; Fig. 4, a back view of the same; Fig. 5, a transverse section of another kind of ruffle to be made by the machine; Fig. 6, a face view of the same; Fig. 7, a top view of the folding-guide used in making the ruffle, shown in Figs. 3 and 4; Fig. 8, a bottom view of the said guide and of the socket in which it is held; Fig. 9, an outer end view of the same; Fig. 10, a transverse section of the same in the line *w w* of Figs. 7 and 8; Fig. 11, a transverse section of the same in the line *x x* of Figs. 7 and 8; Fig. 12, a bottom view of the folding-guide used in making the ruffle shown in Figs. 5 and 6; Fig. 13, an outer end view of the same; Fig. 14, a transverse section of the same in the line *y y* of Fig. 12; Fig. 15, a transverse section of the same in the line *z z* of Fig. 12.

Similar letters of reference indicate corresponding parts in the several figures.

This invention relates to an improvement in the method of folding or doubling a strip of fabric longitudinally upon one or both edges, and to the manufacture of fluted ruffling from such folded strips of fabric; and the invention consists in combining with a pair of feeding or drawing rolls a folding-guide, constructed so as to turn or fold one or both edges of a strip of fabric as it is drawn through the said guide by said rolls; also, in the combination of such a folding-guide with such rollers, when the said rollers are fluted to form corresponding flutes in the said folded fabric.

It also consists in the combination, with a fluting-machine and folding-guide, of a flattening-guide, interposed between the said folding-guide and the fluting-rollers.

It further consists in a folding-guide of novel construction for

doubling a strip of muslin, silk, or other fabric by turning in both edges toward each other on the same side of the strip.

To enable others skilled in the art to make and use my invention, I will proceed to describe its construction and operation as applied to the manufacture of fluting.

A and *a* are a pair of rolls arranged with their axes parallel, and driven so that their surfaces move together in the usual manner of feeding or drawing rolls, the surface of both here represented as correspondingly fluted, the ribs of one meshing into corresponding grooves of the other, as in common crimping or fluting machines, so that as a fabric is drawn between them it will be correspondingly fluted.

In the manufacture of fluted ruffles it is essential that the flutes be successively flattened at some point, usually at one edge or on an intermediate line. For this purpose the rolls are constructed with corresponding annular grooves, here represented as two, *b b'*, of a depth slightly greater than the depth of the flutes, and in width equal to the extent of flattened surface required.

In these grooves are, respectively, placed the pressers *d d'*, composed of elastic metal attached above, as to a rigid bar, B, and bearing down upon the bottom of the groove in the lower roll. Beneath this presser the strip of fabric is run, and thereby pressed down into the groove of that roll. If, therefore, the strip of fabric be presented to the rolls so that one edge will run in said grooves, then that edge will be flattened, as at *c*, Fig. 6; but if the strip be run so that the grooves will take the center of the strip, then the center will be flattened, as seen in Fig. 4. In each of the grooves is also set a stripper, *e*, by which the fabric is raised from the roll in case it
97 adheres thereto. Two folding guides, C C', are here represented. The one, C, is constructed in the form of an inclosed channel-way turned transversely, so as to fold or double the strip along the center of its width, as illustrated by the section, Fig. 5, and its form may be readily understood by a comparison of Figs. 12, 13, 14, 15, the transverse section of the strip being shown in broken lines in Figs. 13, 14, 15, by which it will be readily seen how the folding is gradually produced by the drawing of the strip through the guide. This guide in making fluted ruffles is arranged tangentially to the groove *b*, and with respect to the said groove that the two single edges of the strip will pass through the said groove, and be there flattened by the presser *d*, while the doubled edge will be compressed by the rolls as they draw the strip from the folding guide, and the rolls being fluted will give to the thus compressed double edge of the strip a corresponding fluted appearance. The guide C' is constructed to double the strip by turning in both edges toward each other on the same side of the strip. The entrance at one end of this guide is made in the form of a flat tube, or nearly so, of a width equal to the width of the strip to be folded. Commencing at a short distance from this end the upper side of this tube is open for a portion of its length, having only a narrow run, *f f*, on each side, as shown in Figs. 7 and 10, and the sides of the guide are gradually turned under, as shown at *h h* in Figs. 10 and

11, till it assumes at or near the other end the form shown in Fig. 11. The strip in being drawn by the rollers through this guide has its two edges turned in toward each other on the under side, as illustrated by the representation of the transverse section of the strip in broken lines, Figs. 10 and 11, Fig. 11 showing the strip in the form in which it emerges from the guide, and Fig. 10 showing the turning in and doubling about half completed. This guide is so arranged in relation to the grooves *b'* of the rollers as to deliver the doubled strip with the line in which its edges meet opposite to the centers of the said grooves that the doubled strip may be flattened at the meeting of the edges, and the two doubled edges will be compressed by the rolls as they draw the strip from the folding-guide, and the rolls being fluted, will give to both the thus compressed doubled edges a corresponding fluted appearance, as seen at *g g*, Fig. 4.

The two sides of the guide C', or the one side of the guide C, may be turned in to bring the edges of the doubled strip in the center thereof, or at any distance from the folded edges.

The sockets D D', into which the folding-guides are inserted, and by which the said guides are held in place, have their outer ends made of a form to correspond with the portions of the guides whence the folded strips issue, and the said sockets have their inner ends, which are very nearly close to the rollers, flattened, and constructed with slits *i i'* and tongues *j* to press and flatten the doubled strips as they pass from the folding-guides to the rollers. The slits *i i'* and tongues are here represented as arranged on the under side of the tube.

What is claimed as the invention of the said Thomas Robjohn is—

1. In combination with a pair of pressing or drawing rolls, a folding-guide, constructed substantially as described, so as to form an inclosed channel-way for guiding and supporting the material, and to turn or fold one or both edges of a strip of fabric as it passes through said guide, and deliver the same to said rolls in such folded condition, the said rolls operating to draw the said strip through said guide, and to press the fold or folds formed by said guides, substantially as described.

2. In combination with a folding-guide, constructed substantially as described, so as to form an inclosed channel-way for guiding and supporting the material, and to turn or fold one or both edges of a strip of fabric, the tongue *j*, substantially as and for the purpose specified.

3. The combination, with a fluting-machine, of a folding-guide, constructed and arranged to deliver a strip of muslin or other fabric to the fluting-rollers, and to fold and double the said strip as it is drawn through it by the said rollers, substantially as and for the purpose herein specified.

4. The combination, with the fluting-machine and the folding-guide, of an interposed pressing-guide, substantially as herein specified.

5. The folding-guide, in combination with the socket, which re-

ceives and holds in place the said folding-guide, substantially as herein specified.

6. The combination, with a fluting-machine, of the folding-guide C C', constructed to turn in the two edges of a strip of muslin, or other material, toward each other on the same side of the strip, substantially as herein specified.

GEO. H. WOOSTER, *Assignee.*

Witnesses:
J. V. ROCKWELL.
C. H. WOOSTER.

(Here follows diagram, marked page 98.)

99 (65.)

Department of the Interior, United States Patent Office.

(Vignette.)

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted James S. McCurdy February 26, 1856, No. 14322, for improvement in binding guides.

In testimony whereof, I, H. E. Paine, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this tenth day of December, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and fourth.

[SEAL.] H. E. PAINE, *Commissioner.*

100 UNITED STATES OF AMERICA:

(Vignette.)

To all to whom these letters patent shall come:

Whereas James S. McCurdy, of New York, N. Y., has alleged that he has invented a new and useful improvement in binding guides, which he states has not been known or used before his application, has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

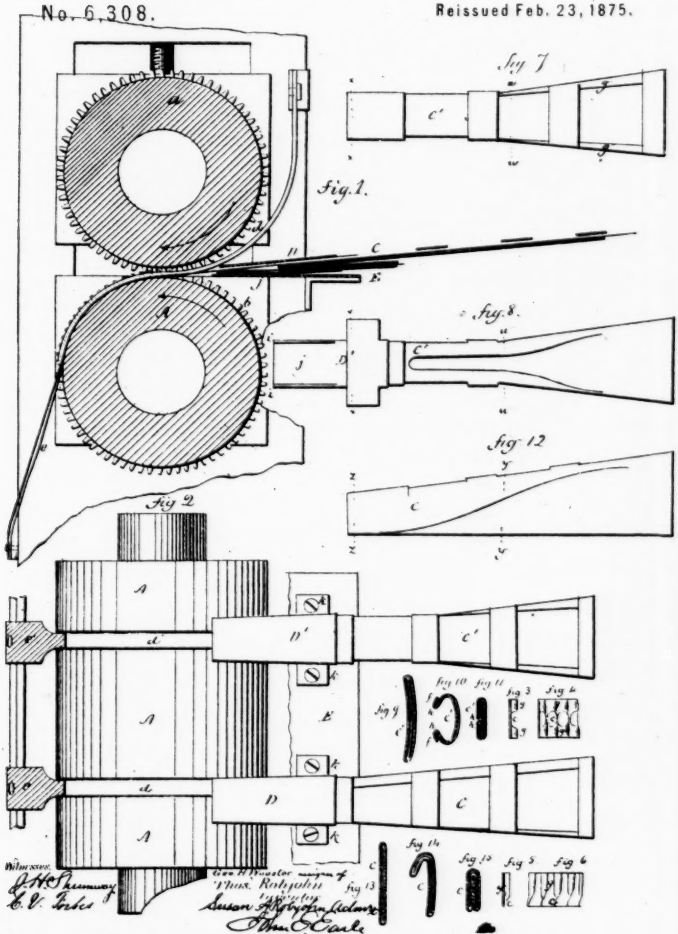
These are, therefore, to grant, according to law, to the said James S. McCurdy, his heirs, administrators, or assigns, for the term of fourteen years from the twenty-sixth day of February, one thousand eight hundred and fifty-six, the full and exclusive right and
101 liberty of making, constructing, using, and vending to others to be used, the said McCurdy, in the schedule annexed, and is made part of these presents.

T. ROBJOHN, dec'd.

SUSAN A. ROBJOHN, Admr'x.

Apparatus for Making Fluted-Ruffles.

No. 6,308. Reissued Feb. 23, 1875.



Witnesses
C. C. Parker

Geo. W. Wooster Assignee of
Thos. Robjohn
Susan A. Robjohn Admx
Thos. G. Earle
Atty

Thomson et al
No. 112 01
Wooster
p. 98.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this twenty-sixth day of February, in the the year of our Lord one thousand eight hundred and fifty-six, and of the Independence of the United States of America the eightieth.

[SEAL.] ROBERT McCLELLAND,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
C. MASON,
Commissioner of Patents.

102 The schedule referred to in these letters patent and making part of the same.

To all to whom these presents shall come:

Be it known that I, James S. McCurdy, of the city of New York, in the State of New York, have invented a new and useful improvement for folding and holding binding upon the edge or edges of cloth, leather, or other materials required to be bound while the same is being sewn or stitched upon such edge; and I do declare the following is a full and accurate description of my said invention:

I am aware that binding and folding guides have been known and used before the date of my invention; but so far as I am informed these have all been, more or less, deficient, in that they have not been so constructed and arranged that the same guide could be readily adjusted and adapted to different widths and thicknesses of binding, and also to different thicknesses of the material to be bound. In using such guides it has been found necessary to have a separate guide or folder for every different width and thickness of the binding to be used, and a person in order to use different widths
103 and thicknesses of binding must have a great number of different guides or binders.

Again, none of the binding guides heretofore made have been so constructed that more or less of the binding could be lapped or folded upon one side of the edge of the material to be bound than the other at the will of the operator.

It has been my object to remedy these defects and to invent a binding guide which could be readily adjusted at the will of the operator to all widths and thicknesses of binding to be used and to different degrees of thickness of the material to be bound, and also so that more or less of the binding could be lapped or laid upon one side of the edge to be bound than the other, as might be desired.

My invention will be readily understood in its construction and mode of operation by referring to the accompanying drawings, of which—

Fig. 1 represents a top view of the lower plate and lip of my guide.

Fig. 2 represents a top view of the upper plate and lip of the same.

Fig. 3 represents an eccentric center-piece between the upper
104 and lower plates which, together with the small spring *d'*, con-

stitutes the back, by which the binding is held up to the edge of the material in a manner which will be hereafter explained.

Fig. 4 represents a top view of the guide with upper plate B removed.

Fig. 5 represents a front view of the guide when no binding is in it, and

Fig. 6 represents the same with the binding in.

In Figs. 1 & 2, $b\,b'$ represent the upper and lower lips of the guide, one of which is turned upwards and the other downwards, so that they will embrace and guide the two edges of the binding A'. Figs. 1, 2, 3, & 4 represent a hole through which passes the screw h, which screw forms a centre upon which the eccentric centre-piece C' turns and holds the whole guide to the machine upon which it is to be used. This hole a' is in the plates A & B, elongated so that those plates may be moved backwards or forwards at pleasure, separately or together, as required. c' is a handle attached to the centre-piece C'. D, Figs. 5 & 6, represents a funnel-shaped receiving guide which stands in front of the lips $b\,b'$, and is attached to the whole binder by means of the screw j'; its office is to receive and direct the binding as it passes to the lips $b\,b'$. m' is a piece of metal of the same thickness as the centre-piece C'. It is fastened to the lower plate A', and the spring d' is soldered or otherwise secured to it at the end, while its other end is allowed to rest against the side of the centre-piece c'. n is the hole into which the screw j' passes, and this screw j' is the centre upon which the plates A' & B turn when moved back and forward.

The operation of this binding guide is as follows, viz:

The whole is secured to the surface of a sewing machine by means of the screw h', in a suitable relative position to the needle with which the binding is to be stitched upon the material. One end of the binding is then placed between the jaws or guiding surfaces of the receiving guide D', the jaws being open at their upper side or edges so that the binding may be easily inserted. This end is then drawn forward through the lips $b\,b'$, one edge of this binding being held by the lower and the other edge by the upper lip, while its back side rests against the spring d'.

The eccentric centre-piece is then turned so that its edge shall be brought in contact with the back side of the binding without crowding it forward too far or crumpling it.

The edge of the material to be bound is now placed between the lips $b\,b'$ and crowded back against the spring d' and the center piece C'. The needle then passes with its thread through the material and the upper and lower edges of the binding immediately in front of and close to the ends of the lips $b\,b'$, from which the binding is discharged; and the first stitch being taken, it will readily be seen that as the material is fed along by the machine that the binding will be drawn through and folded and held upon the edge of such material until stitched to its place by the needle.

When a wide binding is to be used, turn back the centre piece C' until a sufficient space is made between the lips $b\,b'$ and the edge of this centre piece to allow the binding to be drawn through without

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J. S. McCurdy.

Sewing Machine Guide.

No. 14322 Patented Feb. 26, 1856.

Fig. 1.

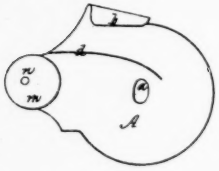

Fig. 2.

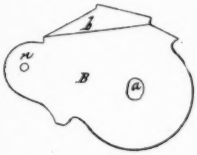

Fig. 3.

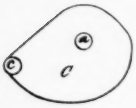

Fig. 4.

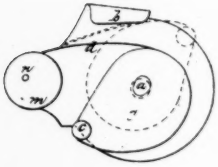

Fig. 5.

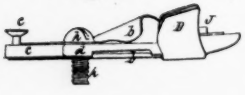

Fig. 6.

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Worster

} p. 108

being crumpled, and proceed as before. In case more of the binding is desired to be lapped and stitched upon the upper than the lower side of the material, move the upper plate and lip forward so as to make the distance from the centre piece to this lip as much greater than the distance from the centre piece to the lower
107 lip as the width of binding to be lapped and stitched upon the upper side of the material exceeds the width to be stitched upon the lower side, and to lay more width of binding upon the under side of the material, push forward the lower plate and lip and draw back the upper one.

These plates are made of thin metal, so that they easily spring or part from the centre *a'* to allow seams and thick places in the material to pass readily.

Having thus described my invention, I shall state my claims as follows:

I claim the centre piece C', in combination with the plates "A" & "B," arranged and operating substantially as set forth, for the purpose of adjusting the binder for the use of binding of different widths, and of applying the same with unequal lap to the material bound.

Witness my hand and seal, this sixteenth day of January, A. D. (1856) eighteen hundred and fifty-six.

JAMES S. McCURDY. [SEAL.]

Witnesses:

O. W. POTTER.

H. H. POTTER.

Ex.: J. A. W. W. McR.

(Here follows diagram, marked p. 108.)

109 (65.)

Department of the Interior, United States Patent Office.

(Vignette.)

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Seth P. Chapin, February 19th, 1856, No. 14283, for improvement in sewing guides.

In testimony whereof, I, H. E. Paine, Commissioner of Patents, have caused the seal of the patent office to be hereunto affixed, this eleventh day of December, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States, the one hundredth and fourth.

[L. S.] H. E. PAINE,

Commissioner.

110 United States of America.

(Vignette.)

To all to whom these letters patent shall come:

Whereas Seth P. Chapin, of New York, N. Y., has alleged that

he has invented a new and useful improvement in sewing guides, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patent,s signifying a desire of obtaining an exclusive property in said improvement, and praying that a patent may be granted for that purpose.

These are, therefore, to grant, according to law, to the said Seth P. Chapin, his heirs, administrators, or assigns, for the term of fourteen years from the nineteenth day of February, one thousand eight hundred and fifty-six, the full and exclusive right and liberty of making, constructing, using, and vending to others to be
111 used, the said improvement, a description whereof is given in the words in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have hereunto caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington, this 19th day of February, in the year of our Lord one thousand eight hundred and fifty-six, and of the Independence of the United States of America the eightieth.

[SEAL.] ROBERT McCLELLAND,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
C. MASON,
Commissioner of Patents.

112 *The Schedule referred to in these Letters Patent and making part of the same.*

To all whom it may concern:

Be it known that I, S. P. Chapin, of the city, county, and State of New York, have invented certain new and useful improvements in means of turning the edges of or otherwise folding cloth, and such other materials as may be sewn with needle and thread, for hemming, cording, tucking, and such like purposes. And I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings forming part of this specification.

This invention consists—

1st. In the employment of a guide or guides, curved or straight, for laying such folds as are required for hemming, and otherwise sewing materials adapted to such operation.

2nd. In the employment of a spring to hold the material, in place of the hand of the operator. The invention is intended chiefly, though not exclusively, to be attached to a sewing-machine.

Fig. 1 in the drawing is a top view of one of a pair of angular heads, by which a single turn or fold is made.

113 Fig. 2 is a face view of the same.

Fig. 3 is a top view of the pair of heads.

Fig. 4 is a front and end view of the same.

Fig. 5 is a longitudinal section of the same through the centre.

Fig. 6 is a side view of the same.

Fig. 7 is a top view of a pair of curved heads for the same purpose.

Fig. 8 is a front-end view of the same.

Fig. 9 is a longitudinal section of the same through the centre.

Fig. 10 is a side view of the same.

Fig. 11 is a top view of a pair of angular plates for the same purpose.

Fig. 12 is a front-end view of the same.

Fig. 13 is a top view showing the arrangement of two pairs of angular plates, like those shown in Figs. 12 and 13, for making two turns for hemming the raw edge of a piece of cloth.

Fig. 14 is a front view of the same.

Fig. 15 is a side view of the same.

Similar letters of reference indicate corresponding parts, where they occur, in the different Figs.

A A^1 are the two angular heads, both of the same form, which will be best understood by reference to Figs. 1 and 2 where A^1

114 is represented. The transverse section is an isosceles triangle, the base of which rests upon a plate, C. The front part is a plane occupying a position perpendicular to the base, but oblique to the sides *a b*, the degree of obliquity being such that the length from *c* to *d* in a right line is equal to the distance from *e* to *f* over the angle. From the side *a* there extends a thin piece, *g*, whose front edge stands at right angles to the lines by which the said side is bounded. The head A is precisely like A^1, but its position is reversed to bring the oblique ends opposite each other. The two heads are placed a little out of line in order that the thin projecting piece, *g*, of the one may lap over the other, as shown in Figs. 3 and 4, and that the cloth or material to be folded may pass under the lap, and they are set so far apart that the cloth will pass freely between their two oblique faces, the head A^1 being movable for the purpose of adjustment. By conducting the cloth over either head, and under the lap of the other one, with the edge at right angles to the sides of the heads, and even with the back part of the lap or the extremity of the oblique face, and drawing it lengthwise, the edge is caused to pass down the space *j*, see Fig. 5, between the oblique faces

115 of the two heads until it reaches the central part where the laps terminate and nearly meet each other, when the edge turns under the other lap. The width of cloth turned in is equal to the extreme depth of the lap, or to the distance between the points, *c d*, and the extremities of a line, *e f*, which is at right angles to the sides of the head, and intersects the former line at the middle of its length. I have endeavored to illustrate the operation of the instrument in Figs. 3, 4, and 5, where a piece of cloth is represented in red

color, the edge to be turned in being denoted by *h* in Fig. 3, and the line where the turn is made by *i*. The cloth is laid upon the head, A, and its edge conducted under the lap of A^1, and is moved from left to right, and in passing to the central part or termination of the first lap the part between the edge, *h*, and the line, *i*, is turned down at right angles to the piece, as shown in Fig. 5, and as the piece moves over the lap of A, the part turned down is caused to pass under the said lap and complete the fold, as shown in Fig. 6.

I have described, firstly, the angular heads, A A^1, as being that method of applying my invention to producing a turn or fold
116 which can be most readily understood. The angular plates, D D^1, are substantially similar to the angular heads, the only difference being that thin plates of metal are arranged to produce the same external form as that of the solid heads. The only difference in the operation of the plates is, that instead of forming a continuous guide for the whole width of the turn in the cloth they only guide it at the edge and where the turn is made, which is, perhaps, preferable, especially as the plates can be more cheaply constructed.

The curved or circular heads, E E^1, shown in Figs. 7, 8, 9, and 10, consist each of a segment of a cylinder, and the ends which face each other are . . . form of a double curve, as indicated by the dotted line, c^1 d^1 in Fig. 7, said curve being formed of two arcs which are tangent to each other, and are described with the same radius as the cylinders, of which the heads form parts. The segments are set out of line with each other like the angular heads, and in order to enable the lap *g*, under which the cloth is first introduced, to stand out prominently, for the purpose of allowing the cloth to enter easily under it, the head E is slightly enlarged at the front end.

For the purpose of varying the spaces under the laps, *g g*, for
117 the cloth to pass, to suit cloth of different thicknesses, that side of the segment where the lap is may be raised by placing under it a piece of paper, card or other material. The segmental heads, E E^1, operate in precisely the same manner as the angular heads, A A^1, and for stiff goods is perhaps better suited.

The instrument represented in Figs. 13, 14, and 15, consists merely of the arrangement of angular plates shown in Figs. 11 and 12, twice repeated. The plates, D* D**, are precisely like the plates, D D^1, and give the first turn or fold to to the edge of the cloth, like the heads, A A^1, as hereinbefore described, but the plate D*, is continued to form a repetition, D^{1*}, of the part which produces the first turn or fold, and another plate, D^{2*}, is arranged to form a repetition of D* D*, the latter plates D^{1*} and D^{2*} being so arranged that as the cloth moves in a right line, the edge of the fold is presented to the second pair of plates in the same way as the edge of the cloth was presented to the first, and the fold is thereby repeated. The base plate, C^1, to which the folding plates are secured, is supposed to be bolted to the feed table of a sewing-machine, and the cloth is drawn tight over the folding plates, as shown in Fig.
118 14, by passing under two tongues, K K, on the front part of the base plate.

F, see Figs. 13, 14, and 15, is the spring which holds the cloth in

rear of the fold. It is attached to an arm, G, which is bolted to the plate C^1, and it has a broad bearing piece, *m*, which rests upon the cloth and holds it against the face of the feed-table, which is represented by a line, *l l*, in Figs. 14 and 15. It is better that this bearing-piece should press rather harder at its front than at its back end, in order to give the cloth a slight tendency to move laterally or back towards the plates $D^* D^{2*}$, but this lateral or backward tendency is counteracted by a fixed guide piece, *n*, attached to the plate C^1 opposite the spring, and the spring is caused only to keep the cloth from moving forward, as it comes in contact with the folding plates. This spring is also applicable in sewing-machines where the folding apparatus is not employed, in order to keep a proper tension on the cloth and ensure a straight feed.

In all modifications of the invention it must be particularly observed that the distance over the heads or plates, where the cloth passes, must be equal to the length of the oblique or curved guide *c d*, or $c^1 d^1$, in contact with which the edge passes in being folded.

It is in order to make the cloth travel the same distance directly as the edge travels obliquely that the upper side of the folding heads or plates are made of angular or arched form.

There are, however, some compensating conditions rendering this form in a less degree necessary, such as, 1st. An arrangement of guides operating chiefly on the portion of the material going to form the folds, leaving the other portions free to corrugate and drag. 2d Feeding in the material in a turned or rolled shape given by the hand. 3rd. The elasticity of the material and the feed acting in conjunction with the others. In adjusting a hemming folder to a sewing-machine, it should be observed, to make that line of the material operated on by the feed, move a distance fully equal or greater than other parts.

In order to cord the edge of the cloth, the cord merely requires to be placed in a groove, which should be provided, running directly over the front folding plate or head close behind the line where the fold takes place. The cord is covered by the cloth and drawn along with it, and the edge is turned under it.

I have described above two of the simplest forms required for the guides to lay the material into folds of any desired number or direction, and at the same time preserve the parallel relations of all its fibres. Other forms there are more or less analagous to these, equally correct in principle, or so nearly so as to be useful for obtaining several successive folds. One of the best is that obtained by carrying the line of the material on which the fold is being turned in a flattened arch, like the side of an ellipse. The folds may then be carried in a regular wind singly or several at once, one turning upon the other.

Another form, differing a little from this, is that obtained by carrying the edge obliquely over or around a cylinder or cone in a spiral direction.

The line of the turn then sympathizes with the edge, and be-

comes a spiral also, and the fold becomes arched transversely. In the first part of the movement the material may be guided on either surface or neither, but the latter part requires it on the outer side to force the edge under and compress the
121 hem. This underlap should partake of the spiral also, but the corresponding overlap need scarcely exist at all if two turns be brought in together, for the transverse arching and the resistance of the material to an abrupt bend perform the same use. The various forms which may be given to a flexible material resulting in folds may be reduced to three classes. In the 1st the movement is by right lines; 2d, by regular curves; 3d, by spirals. I have employed several varieties of each class, and in order the inverse of that adopted in this description. My preference is most decidedly for the regular forms, or those nearly so, and I only mention the others to show the successive steps of the invention.

The form to be given to a material in its transitional state being determined, the arrangement of guides and supports follows.

These admit of much variation, and operate in several ways. There is the glancing effect, as when a flexible material is pushed against an oblique surface; the supporting effect, as when drawn on a convex surface; the deflecting effect, as when drawn
122 obliquely across an edge or corner.

An example of the latter occurs in the operation of the underlap of the outside plates above, which causes the material to hug closely around the edge of the opposing upper lap, and counteract any tendency of the material to fall out. For the more flexible materials supporting is generally better than guiding. These combinations should be made with particular reference to convenience in operating. In use of the above combinations it will be observed that a backward movement restores the material to its original form when the machine has broken thread and failed to sew for some distance. The construction and adjustment of instruments for hemming and plaiting on the principles of this invention is a matter of exact calculation and measurement, and not at all of experiment.

I do not claim a device invented by S. C. Blodget for cording umbrella covers, in use of which the edge of the cloth in a partially turned state is guided into a slot, and a turn over the cord completed by passing under the presser, the parts forming the sides of
123 the slot being neither curved nor crossing, and the one conveying the cord terminating at some distance from the presser.

But what I claim as my invention and desire to secure by letters patent is the method of forming hems on the edge of flexible materials by means of folding guides made to turn the edge 180° or more, substantially as described.

And in combination with guides substantially as described I also claim the employment of a spring (F, Fig. 13) or analagous device—

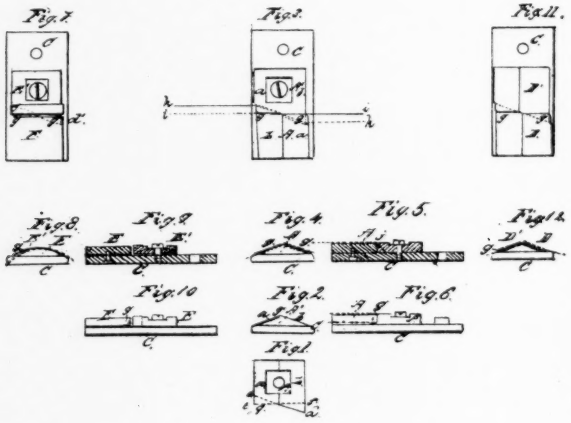
1st. To hold and guide a piece of cloth by an edge or plait. 2d. To cause the cloth to follow the guides placed between it and the

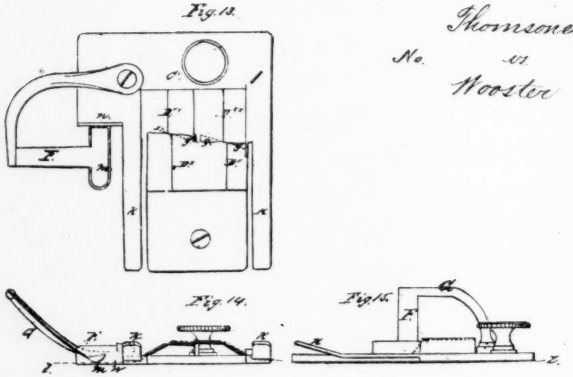
124

S. P. Chapin

Cloth Folder for Sewing Mach.

No. 14283 Patented Feb. 19. 1856.





Thomson et al. No. 11 Wooster } p. 124.

Witnesses
Henry J. Brown
J. W. Hamilton

Inventor.
Seth P. Chapin

needle with certainty. 3d. To keep the cloth on a stretch while the stitch is being drawn.

SETH P. CHAPIN.

Witnesses:
HENRY T. BROWN.
WM. TUSCH.

Ex'd: E. A. M. H. M. H.

(Here follows diagram, marked p. 124.)

125 ALEXANDER DOUGLAS, of New York, N. Y.

Letters Patent No. 21659. Dated Oct. 5, 1858. Improvement in Folding Guides.

Spec., Petition, and Oath as originally filed.

The schedule referred to in these letters patent, and making part of the same.

To all whom it may concern:

Be it known, that I, Alexander Douglas, of the city, county, and State of New York, have invented a new and improved folding guide for folding and turning in two edges of a piece of cloth or other material for binding, or for other purposes, preparatory to sewing; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawing, forming part of this specification, in which—

Fig. 1 is a front view of my improved guide as adapted for binding and inserting two cords within the binding.

Figs. 2 and 3 are opposite end views of the same.

126 Fig. 4 shows a section of the binding and cording applied to the edge of a piece of goods.

Fig. 5 exhibits an end view, corresponding with Fig. 3, of the guide, as adapted for binding without cording.

Similar letters of reference indicate corresponding parts in the several Figs.

This guide is formed by combining and arranging, as hereinafter described, two guides such as are described and claimed in the patent of S. P. Chapin, dated Feb'y 19th, 1856.

To enable others to make and use my invention, I will proceed to describe its construction and operation.

The simplest method of constructing my improved guide is to take a plate of metal, A, say about ten (10) inches in length,

127 and of a width somewhat greater than that of the strip or piece of cloth or other material which is to be folded and have its edges turned in, and turn the whole length of both edges of the said plate towards each other, as shown at *a a* in the end view, Fig. 2, leaving just width enough between the two bends *a a* to receive the strip or piece of cloth in the manner indicated by the red line in Fig. 2, which represents a transverse section of the cloth. The plate, having its edges thus turned or bent, has the bent edges

turned again, the turn commencing at a short distance from the end shown in Fig. 2, and increasing towards the other end shown in Fig. 3, till at the latter end the bends *a a* are turned towards each other, and the edges of the plate away from one another.

This second bend is represented at *b b'* in Fig. 3. The plate is then again bent near the middle, commencing at the end shown in Fig. 2, and increasing all the way along to the other end where the two bends, *b b*, come nearly together. This gives the edges of the plate the curved and twisted form, shown in Fig. 1. The plate A is strengthened by narrow transverse pieces of plate *c c*, which
128 are secured to its edges and lay as close as practicable to the convex side of the plate, just leaving space enough for the cloth to pass between them and the plate A.

By inserting a strip of cloth or other material between the bends *a a*, at the end of the guide, shown in Fig. 2, and drawing it towards the other end, the edges are gradually folded down, and the strip folded in the middle till it assumes the form shown in Fig. 3 or Fig. 5, in red outline. The principal difference between the forms of the guides, shown in Figs. 3 and 5, is that the bends *c* and *b'* are made rounder in that shown in Fig. 3, as it is intended for the insertion of a cord *d*, at the edge of the material to which the binding is to be applied, which is shown by blue outline in Figs. 3, 4, and 5, and another cord *e*, in one turn of the binding, and this guide has tubes *g g* attached to conduct the cord *e*, and tubes *h h* to conduct the cord *d*, as shown in Fig. 1. The guide shown in Fig. 5 is simply for ofilding and turning in both edges of a binding without cording.

To apply the binding to the edge of a piece of cloth or
129 other material, the said edge is placed within the guide, as shown in Figs. 3 and 5, and drawn along at the same time as the binding piece is drawn along. When no cording is inserted in the binding, or only the cord *e*, it is only necessary to stitch it at the point shown by the line *x* in Figs. 4 and 5, but when a cord is required at the edge, and broad binding is used, stitching will generally be required at the points *x* and *y*, the same as when two cords are used, though if a narrow binging be used and the edges are turned in far enough, one line of stitching will suffice. The guide, when applied to a sewing-machine, will stand in the position shown in Figs. 1, 2, 3, relatively to the horizontal bed of the sewing-machine, which is indicated by Figs. 1 and 3, by the line *f f*, and will be provided with a plate *i*, through which to insert a screw to attach it to the bed *f f*.

One great advantage of this guide is that it allows strips of raw-edged material without a selvedge to be used for binding purposes.

Another is that it enables cords to be put in at the edges of
130 the binding as well as at the fold thereof, which, I believe, can be done by no other guide in use.

I do not claim the single guides as formed by the bends *a b* and *a b'* for turning in the edges of the cloth singly, as those are like the guides of S. P. Chapin, as claimed by him in his patent hereinbefore named.

But I claim as new and my invention—

The compound guide herein described, composed of the two simple guides *a b* and *a b'*, combined and arranged in any way, substantially as herein described, to fold and at the same time turn in the two edges of a strip or piece of cloth or other material.

ALEXANDER DOUGLAS.

Witnesses:
O. D. MUNN.
S. H. WALES.

131 *Petition.*

To the Commissioner of Patents:

The petition of Alexander Douglas, of New York, in the county of New York and State of New York, respectfully represents—

That your petitioner has invented a new and improved folding guide for folding and turning in two edges of a piece of cloth or other material for binding, or for other purposes, preparatory to sewing, which he verily believes has not been known or used prior to the invention thereof of your petitioner. He, therefore, prays that letters patent of the United States may be granted to him therefor, vesting in him and his legal representatives the exclusive right to the same, upon the terms and conditions expressed in the act of Congress in that case made and provided, he having paid thirty dollars into the Treasury and otherwise complied with the requirements of said act; and he hereby authorizes O. D. Munn, S. H. Wales, and A. E. Beach, of the firm [of] Munn & Co., or their accredited agents, to act as his attorneys in presenting the
132 application, and in making such alterations and amendments as may be required.

ALEXANDER DOUGLAS.

133 *Oath.*

CITY & COUNTY OF NEW YORK, } ss.:
State of New York, }

On this 9th day of April, 1856, before the subscriber, a commissioner of deeds in and for said county, personally appeared the within-named Alexander Douglas, and made solemn oath that he verily believes himself to be the original and first inventor of the within-described improved folding guide for folding and turning in two edges of a piece of cloth or other material for binding, or for other purposes preparatory to sewing; and that he does not know or believe that the same was ever before known or used, and that he is a citizen of the United States.

M. S. BREWSTER,
Commissioner of Deeds.

Ex'd: E. A. M. H. M. H.

134 Endorsed: Alex. Douglas. Imp't in folding guides. Copy petition, oath, & spec'n as originally filed for letters patent No. 21659, dated Oct. 5, '58.

135 N. Y., *November 12th*, 1880.

Making report copies to counsel.

N. Y., *November* 18, 1880.

On motion to open proofs and for leave to introduce newly-discovered evidence.

Adjourned to Nov. 24, 1880, at 12 m.

N. Y., *November* 24, 1880, 12 *m.*

Adjourned to November 30, 1880, at 11 a. m.

N. Y., *November* 30, 1880, 11 *a. m.*

Present: Mr. Betts, counsel for complainant, and Mr. Lord and Mr. Clayton, counsel for defendant.

Motion to leave to open respondent's proofs argued upon the annexed affidavits.

136 *Report of Master.*

Circuit Court of the United States, Southern District of New York.

GEORGE H. WOOSTER
v.
WILLIAM S. THOMPSON, CHARLES H. LANGDON, George C. Batchelder, and Allen E. Hewitt, composing the firm of Thompson, Langdon & Company. } For Equity.

To the honorable the judges of the circuit court of the United States for the southern district of New York:

I, Joseph Gutman, Jr., the master appointed in and by the interlocutory decree in the above-entitled cause to take and state the account of the gains, profits, and advantages derived, received, or made by the defendants by reason of their infringement of the complainant's patent, and to assess the damages sustained by the complainant by reason of any infringement of said letters patent by the defendants, do report as follows:

I have been attended by the respective parties and their counsel, and have heard and taken the proofs and allegations presented to me on either behalf as they appear hereto appended, and I do find therefrom, as matter of fact, that since the 18th day of January, 1877, the defendants have had in use in their business at various times twenty-seven folding guides, infringing the complainant's patent.

I further find, as a matter of fact, that during the period of their said infringement of the said patent the defendants have
137 folded 1,217,870 yards of goods by the use of the said folding guides, and that during such period there was no means known or used or open to the public to use for folding such goods in the same manner, or in substantially the same manner, other than folding such strips by the hands of the operator, and that the saving in cost to the defendants, or their profits by the use of the

folding guides, was three cents on each piece of six yards, which saving I find, as a matter of law, the complainant is entitled to receive from the defendants, as their profit from the use of the patented device, amounting on the 1,217,870 yards of material folded by the defendants during the said period to the sum of six thousand and eighty-nine dollars and thirty-five cents. I further find, as matter of fact that during the period of said infringement the complainant depended upon license fees for his compensation for the use of the patented device, and that the amount of such license fee constitutes his loss or damage for the unauthorized use of his invention.

I further find that during the period of the infringement the complainant had an established license fee for the use or proposed use of the said folding guide, such license fee being at the rate of fifty dollars, for a period not exceeding one year, for the use of each folding guide, where no special rate of commutation was made, and that when parties paid for a number of such guides without litigation, and in advance, such special commutation rates were as follows: One hundred dollars for three folding guides, one hundred and fifty dollars for five folding guides, two hundred and fifty dollars for ten folding guides, five hundred dollars for twenty folding guides, and one thousand dollars for more than twenty guides. Such license fees were payable in advance at the commencement of use.

I further find that the defendants, not having accepted a license, or paid the license fee, but having litigated the complainant's claim, were not entitled to such commutation rates as against the complainant.

138 I further find, as matter of fact, that according to such established rates there would have been due and payable by the defendants to the complainant, in the year 1877, the sum of eight hundred dollars as license fees on sixteen folding guides; in the year 1878 the sum of four hundred dollars as license fees on eight folding guides, and in the year 1879 the sum of one hundred and fifty dollars on three folding guides, amounting in all to the sum of thirteen hundred and fifty dollars, which said last-named sum I find to be the amount of damages sustained by the complainant by reason of the said infringement during the said period.

I do therefore report the sum of six thousand and eighty-nine $\frac{35}{100}$ dollars as the profits, gains, and advantages which the said defendants have derived, received, or made by reason of their infringement of the complainant's patent, and the sum of thirteen hundred and fifty dollars as the amount of damages (as distinguished from profits) sustained by the complainant by reason of such infringement.

All of which is respectfully submitted.

Dated N. Y., November 19, 1880.

JOSEPH GUTMAN, JR., *Master.*

Endorsed: Circuit court of the United States, southern district of New York. In equity. George H. Wooster *vs.* William S. Thomson, Charles H. Langdon, George L. Batchelder, and Allen E. Hewitt,

composing the firm of Thomson, Langdon & Company. Report of master on accounting. To the honorable the judges of the circuit court of the United States for the southern district of New York. U. S. circuit court. Filed Dec. 10, 1880. Joseph M. Deuel, clerk.

139 U. S. Circuit Court, S. Dist. N. Y. In Equity.

GEO. H. WOOSTER *vs.* WM. S. THOMSON *et al.*

CITY & COUNTY OF NEW YORK, } ss.:
State of New York, }

JOSEPH C. CLAYTON, being duly sworn, deposes and says: That he is a counsellor-at-law, having his office in the city of New York, and is solicitor of record in the above-entitled cause.

Deponent further says that the master's report, as proposed herein, is of such a tenor as to greatly surprise him and the defendants herein, especially in regard to the finding upon the question of profits.

Deponent further says that he has never had an opportunity to examine with due care the Robjohn patent since the accounting herein until upon the day of summing up the case; that the record does not show that the Robjohn patent was ever duly put in
140 evidence, but only that complainant *produced* some patent owned by him.

Deponent further says, before the hearing before the master, he applied to the master to see the Robjohn patent, if in evidence; that the master replied that he did not think it had been put in evidence, and that he could not find it.

Therefore, deponent says that when a copy of the Robjohn [patent] was produced & used at the hearing by complainant's counsel, who claimed that the said patent covered the use of the single guide in evidence, this deponent was surprised, and was not able to properly understand & present the def'ts' case.

Deponent further says that on the 23rd day of November, 1880, he for the first time became certainly aware that the said Exhibit Single Guide was accidentally defective, and that, in point of fact, it did not contain, and was not used in connection with, any spring, *j*, like, or substantially like, the spring *j* named in the Robjohn patent.

Deponent also says that he relied so fully upon defendants' right to use a single guide or hemmer, and to use the McCurdy &
141 Chapin guides, that, having put those patents in evidence, he did not deem it necessary to put in special proofs as to the operation of said guides.

In regard to the estimate made by Mr. Wooster, deponent believed it to be too preposterous on its face to require notice; it was based upon Mr. Wooster's practice in making ruffles and collars, and not upon any actual experiments or tests upon the peculiar work (folding strips) done by the defendants. It was too loose and inaccurate a statement, resting upon mere estimate, to amount to proof; so this deponent regarded it, and did not put any proofs in reply.

Deponent is therefore taken by surprise at the weight accorded to the estimate.

Deponent further says, of his own knowledge (based upon the personal examination and witnessing of the experiments described in the annexed affidavit of Wm. H. Batcheller, and of one of the experiments of Emma Seitz, described in the annexed affidavit of Wm. A. Nettleton), that the said estimate of Mr. Wooster was wholly extravagant, unreasonable, & preposterous; and that deponent ver-
142 ily believes that with reasonable opportunity he can demonstrate to the master that the profit due to the use of the patented double guide is very much less than the estimate of Mr. Wooster.

Deponent further says that within the past week he has, for the first time, heard of or seen the record of pleadings & proofs in certain equity causes between the said Wooster & Michael Hertz, A. N. Luebs, John Lacy, and numerous other defendants, said suits being under the patent in suit & in this court. Deponent further says that all of the testimony therein is newly discovered testimony as to these defendants in this cause; that deponent desires to examine in this cause all the witnesses in said several cases, and to put in evidence in this cause all the patents and exhibits in said cases which bear upon the issue of damages & profits on this accounting.

Deponent especially desires to produce before the master the testimony of Seth P. Chapin, and to prove the same matters testified to by said Chapin in said several cases on 11th & 12th Oct., 1875, before John A. Shields, Esq., when the said witness was examined by Mr. Law and cross-examined by Mr. Betts.

143 Deponent says that he verily believes that it is material to the interests of justice that the evidence of said Chapin and of others, especially of one Bradford and others, who were examined in said cases, should be presented in due form to the master for the purpose of proving that the Chapin guide and other guides and hemmers were capable of folding strips on one edge; and that the witness Wooster was grossly in error in testifying that there was no mode known to him by which defendants could fold their strips which did not infringe the Douglas & Robjohn patents, except folding by hand.

Deponent further says that since service of notice of report by the master herein he has given all possible time to the preparation for this motion that was — able to give without sacrifice of prior and important professional engagements; that it was needful for him to personally attend at defendants' factory to direct the experiments described by Nettleton & Batcheller; and that yesterday, 23rd November, was the very first day that he was able to devote to
144 that purpose. That deponent and Mr. Law on that day prepared said affidavits, yesterday, leaving blanks for insertion of dates, and left them this morning at Bridgeport, Conn., for execution. That deponent left Bridgeport this day before the notary could attend for such execution. That deponent is in instant expectation of the receipt of said affidavits, but that up to this moment, twelve 30 minutes o'clock noon, they have not been received.

J. C. CLAYTON.

Subscribed and sworn to before me, this 25th day of November, A. D. 1880.

[SEAL.] JAMES T. LAW,
Notary Public, New York.

Endorsed: U. S. circuit court, south. dist. N. York. In equity. Geo. H. Wooster *vs.* William S. Thomson *et al.* Affidavit of Joseph C. Clayton.

145 U. S. Circuit Court, S. Dist. N. Y.

GEO. H. WOOSTER
vs.
WILLIAM S. THOMSON, CHARLES H. LANGDON, GEORGE C. BATCHELLER, and ALVIN C. HEWITT. } In Equity.

COUNTY OF FAIRFIELD, CITY OF BRIDGEPORT, *State of Connecticut,* } *ss.:*

William A. Nettleton, being duly sworn, deposes and says: That he is about forty-eight years of age & resides at Bridgeport, Connecticut, & is the superintendent of defendants' factory for the manufacture of corsets, and that he is acquainted with the course of business and practical manufacturing of corsets as carried on in said factory; that deponent started said factory and organized its operation, and has been acting superintendent thereof throughout its existence since it began, about January, 1877.

Deponent says that under his personal direction and super-
146 intendence he has, during the past week, caused certain experiments to be made at said factory for the purpose of determining the cost of the labor of folding stips of jean upon both edges by hand alone, without the use of any guide or folder other than the fingers turning over the edges of the strip upon a table; that during these experiments, to his personal knowledge, one of the girls in the said factory (without any previous experience of that sort) did, with her fingers, upon an ordinary flat, wooden work-table, without any mechanical appliance (except a thimble to protect the finger), take strips of jean about an inch and a half wide and fold a hem on each edge, at the rate of sixteen hundred yards per day of ten hours; that the first experiment above referred to was made on the 16th day of November, A. D. 1880, by Emma Seitz, a young girl employed ordinarily as a stitcher; that on that occasion, by actual count and accurate timing, she folded precisely, as above described, eighty yards of such strips in twenty-seven minutes; that,
147 allowing 80 yards per 30 minutes, the amount said girl could fold in a day of ten hours (which is the working time in said factory) is sixteen hundred yards of said strips; that in like manner the said Emma Seitz did, on the 23rd day of November, 1880, fold 87 yards of the same strips in 32 minutes, which would be at the rate of 1740 yards in a day of ten working hours; that on this 24th day of November the said Emma Seitz did, in precisely the same manner, fold on both edges in one hour 189 yards of the same jean strips, $\frac{7}{8}$ of an inch wide, which would be at the rate of 1,890 yards

Wm. A. Nettleton A.

No 112
P. 147

Wm A. Nettleton A. No 112 P. 147

Wm. A. Appleton A. No 112 P. 147

per day of ten working hours. Deponent further says that the strips hereto annexed are some of the identical strips folded as above stated by the said girl. Deponent now marks them "William A. Nettleton, A." (Here follow three jean strips, each marked Wm. A. Nettleton, A.)

Deponent further says that the average rate of wages for girls adapted to fold strips, as above described, is about three dollars per week.

148 That the average of the above three experiments is at the rate of 1,743 yards per day of ten working hours. That, if 1,600 yards per day can be made at 50 cents wages, and the cost per yard for the labor of folding said strips, as above described would be $\frac{1}{3\frac{1}{2}}$ of a cent per yard.

Deponent further says that from his knowledge of the above experiments, and of the art and practice of folding strips, as above described, he verily believes that it is perfectly possible and practical, after but short practice, for little girls, worth in wages three dollars a week, to fold such strips at or about the said average rate and cost.

Deponent further says that at this rate one girl could fold by hand in the time covered by the decree (Jan., 1877, to April, 1879,) say 675 working days, 1,175,525 yards, at a cost of $\$337\frac{50}{100}$.

That the total quantity of strips estimated in deponent's former testimony, to have been made by defendants up to injunction was 1,217,870 yards; that upon the above basis this would require labor equivalent to one and $\frac{1}{3}$ girls, or $\$449\frac{50}{100}$. But allowing for margin, that it would require two girls, the cost would be $675 for the entire labor of folding the said total amount of 1,217,870 yards.

149 Deponent further says that he verily believes that two girls at $4 per week each could have readily folded all the strips required or used by defendants, in the same way, as above described by hand.

Deponent further says that he estimates and believes that the profit by use of the double folder sued upon is the wages saved of one girl at $4 per week, and no more.

Deponent further says that the above-described strips, samples of which are annexed, as above stated, are identical in all respects with the strips used for sewing on corsets to form bone pockets, such as defendants used upon their corsets during the period covered by the decree herein.

Deponent further says that, from careful calculation, he knows that the total cost of the said average strips folded on both edges by hand, as above described, is at the rate of about 70 cents per 144 yards, which is less than one-half of a cent per yard.

WILLIAM A. NETTLETON.

150 Subscribed and sworn to before me, this 24th day of November, A. D. 1880.

[SEAL.] I. B. PRINDLE,
Notary Public.

Endorsed: U. S. circuit court, south. dist. N. Y. In equity.

Geo. H. Wooster *vs.* Wm. H. Thomson *et al.* Affidavit of Wm. A. Nettleton.

151 U. S. Circuit Court, South. Dist. N. York.

GEORGE H. WOOSTER
vs.
WM. S. THOMSON, CHARLES A. LANGDON, GEORGE C. BATCHELLER & ALVIN C. HEWITT.

DISTRICT OF CONNECTICUT, }
County of Fairfield, } *ss:*

William H. Batcheller, being duly sworn, says:

I am thirty-one years of age, and reside in Bridgeport, Connecticut, and am in the employ of the defendants, Thomson, Langdon & Co., at their corset manufactory in said Bridgeport, and have been in the employ of said company for nearly three years last past, and now have charge of the cutting and folding of the strips, which are sewed upon corsets to form the pockets in which the bones are inserted, and that deponent has had charge of such particular work since about the first of January last, & succeeded in such department Albertus Close, who is now engaged in said manufac-
152 tory as a cutter; that deponent has knowledge of the folding guides which have been used by the defendants at their said manufactory since deponent has been employed there for folding the strips before referred to, and is familiar with their construction and operation.

Deponent further says that the folding guides, which have been used at defendants' manufactory for folding the strips to be sewed upon corsets to form the bone pockets, do not press and flatten the folded strips, and that such folding guides have no tongue or other mechanical contrivance or device attached to or connected therewith for pressing and flattening the folded strips as they pass from the folding guides, or which effect such purpose, and that the pressing and flattening of such folded strips is wholly effected by causing the strips, after they have passed through the folding guides, to be drawn downward over the edge of the metal table or base upon which the folding guide is placed and then winding the strips
153 upon a reel, by the turning of which the strips are also drawn through the folding guide.

Deponent further says that he has carefully examined the folding guide, which is represented to deponent to be an exhibit in this cause (and which deponent has marked with the letter A scratched thereon), and that said guide is not so constructed that it will press or flatten the folded strip, and has no tongue or other mechanical device or contrivance attached thereto, or made a part thereof, which acts to press or flatten the folded strip; that the opening at the delivery end of said guard, between the lower or under half of the flattened tube and the bottom plate of the guide is evidently merely accidental, the flattened tube not having been fully soldered to the bottom plate, and that the lower or under half of such flat-

tened tube in such guide should have been closely and fully soldered to the bottom plate, as is seen in the folding guide hereto annexed, marked A A on the back thereof, and which is a guide that has been used by defendants at their manufactory, and that
154 the lower or under half of the flattened tube, as now existing in the said guide, marked with the letter A, though not fully soldered across its whole end to the bottom plate, does not, and can not in any way act to press and flatten the folded strip as it passes through or from such guide.

Deponent further says that on the 23d day of November inst. he carried a continuous piece or strip of cloth to be passed through such guide, marked A, without permitting such strip, after it had passed through such guide, to be drawn downward over the edge of the metal base plate upon which the guide was placed, and then wound upon a reel, and that the condition of the said strip, after it had so been passed through such guide, is shown by the several pieces marked 1, 2, 3, 4, 5, & 6, which pieces are a part of the continuous strip so passed through said guide, and were cut into short pieces to permit them to be placed in a box in which they could be carried without change in their condition, and that the coil or
155 roll marked 7 shows a portion of the same strip passed through the same guide and then drawn downward over the edge of the base plate and wound upon a reel.

Deponent further says that on the same day he caused a continuous piece, or strip, of the same material as that before referred to as passed through the guide marked A, to be passed through the guide marked A A, in the same manner, that is, without permitting the folded strip, after it had passed through the guide, to be drawn downward over the edge of the supporting base-plate, and then wound upon a reel, and that the strips 8, 9, 10, 11, & 12, which were cut from such continuous piece show the condition of the strip, after it had been so passed through such guide; and that the roll, marked 13, shows a further portion of such strip, passed in the same manner through such guide A A, and then drawn downward over the edge of the supporting base-plate, and then wound upon a reel.

156 Deponent further says that on the same day he caused a continuous strip of cloth to be passed through a folding guide, which turned over each edge of such strip, but without permitting such folded strip, after it had passed through such guide, to be drawn downward over the edge of the supporting metal plate, and then wound upon a reel, and that the pieces marked 14, 15, 16, 17, 18, 19, & 20, which were cut from such continuous strip, show the condition of such folded strip after it had been so passed through such double guide or folder; and that the roll, marked 21, shows a further portion of the same strip, passed in the same manner through such double folder and then drawn downward over the edge of the supporting base-plate, and wound upon a reel.

Deponent further says that the folding guides, or folders, which have been, and are now, used in the manufactory of said defendants, have the effect to only turn or fold the edge of the strip

157 passed through such guides, and not to press and flatten the folded strip, and that folded strips, as delivered from such folders, or folding guides, are not in a condition suitable for being sewed upon corsets, and could not be sewed upon corsets by a sewing-machine continuously, as such strips are now sewed upon such articles; and that such strips, after they are passed through such folders, must be pressed or flattened by some device adapted for such purpose, and that such strips are pressed and flattened at defendants' manufactory by being drawn, after they have been passed through the folder, downward over the edge of the supporting metal base-plate, and then wound upon a reel.

WILLIAM H. BATCHELLER.

Subscribed and sworn to before, this 24th day of November, 1880.

[SEAL.] I. B. PRINDLE,
Notary Public.

158 Endorsed: U. S. circuit court, south. dist. N. Y. In equity. George H. Wooster *vs.* William H. Thomson *et al.* Affidavit of William H. Batcheller.

159 U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER *vs.* WILLIAM H. THOMSON *et al.*

CITY AND COUNTY OF NEW YORK, } *ss:*
Southern District of New York, }

Frederick H. Betts, being duly sworn, says: I am counsel for the complainant herein. The report in this case is substantially similar in the method of computing profits, and in the rule applied for assessing damages, to the report in the case of Wooster *v.* Taylor. As early as the 5th day of June, 1879, I notified Mr. Clayton, counsel for the defendants herein, of the nature of Mr. Wooster's claim in the present case, and particularly called his attention to the reissued patent of Thomas Robjohn, dated February 23rd, 1875, reissue No. 6308. On the 5th day of June, 1879, I sent Mr. Clayton a copy of my brief in the case of Wooster *v.* Taylor, which brief
160 contains large extracts from the master's report, and I told him verbally, either immediately before that time, or immediately after, that we should proceed in this case on substantially the same basis as in the Taylor case. Prior to June 30th, 1879, I received a letter from said Clayton, without date, in the following words:

"Mr. BETTS: Can you lend me the Robjohn folder patent? I have twice written to Pat. Off. without receiving it. My senior client, in Wooster, Thomson, Langd. & Co. case has returned, and I wish to show him the patent.

"Y'rs, J. C. CLAYTON."

On June 28th, 1879, I sent Mr. Clayton the following letter:

"JUNE 28TH, 1879.

"J. C. CLAYTON, Esq:

"DEAR SIR: I send to you a copy of the Robjohn-Wooster patent, of 1864, reissue 6208. Not hearing from you we have entered a rule taking the bill *pro confesso*. I am still ready to negotiate, however, on our terms

161 "Yours, respectfully, FREDERIC H. BETTS."

On June 30th, 1879, I received the following leter from Mr. Clayton:

"WOOSTER *v.* LANGDON *et al.*

"N. Y., *June 30th*, 1879.

"F. H. BETTS, Esq.

"DEAR SIR: Messrs. Thomson, Langdon & Co. withdraw their offer of $500 in settlement of claims in above case. They were led to make this over-liberal offer solely as a ready means of avoiding the labor and expense of litigation. Much obliged for loan of the Robjohn patent No. 6308 herewith returned. It does not appear to have any bearing upon this case.

"Very respectfully, yours, J. C. CLAYTON."

In reference to the expressed desire of Mr. Clayton in his affidavit of November 25th, 1880, to introduce in evidence certain depo-

162 sitions in the case of Wooster *v.* Michael Herz *et al.*, I say:

Said cases by Mr. Wooster were commenced in this court in November, 1874, and were continued until November, 1877, at which time the testimony in said cases was finally closed, and the cases were put upon the calendar of the court for hearing.

In all of said cases the defendants abandoned their defense and took licenses under the Wooster patent, with the exception of one of said cases, entitled George H. Wooster *vs.* Louis Dryfoos *et al.*, in which case a decree was rendered against the defendant without opposition on his part, on the —— day of ———, 1879, and said cause is now proceeding before a master on an accounting.

FREDERIC H. BETTS.

Sworn to before me.

JOSEPH GUTMAN, JR.,
United States Commissioner, S. D. N. Y.

Endorsed: U. S. circuit court. George H. Wooster *vs.* Thomson, Langdon & Co. Aff't to resist motion.

163 United States Circuit Court, Southern District of New York.

GEORGE H. WOOSTER
vs.
WILLIAM S. THOMSON *et al.* } In Equity.

To the honorable the judges of the circuit court of the United States for the southern district of New York:

The undersigned respectfully further reports herein as follows:

After the making of the report of profits and damages herewith

presented, dated November 19th, 1880, notice of which had been given to the counsel for the respective parties, an application was made before its filing for leave to open the respondent's proofs upon the grounds that the defendants had been suppressed, and that they had made discovery of new evidence.

After hearing such application upon the affidavits hereto
164 appended, and upon a careful consideration of the matters therein stated, I am unable to discover therefrom any sound basis for the allegation of surprise, as the report of profits is admittedly in accordance with the proofs submitted in that regard, nor does there seem to me to be disclosed in such affidavits any newly discovered evidence which would warrant the subjecting of the complainant to the further delay and expense incident upon a reopening of the proofs.

All which is respectfully submitted.

N. Y., December 9, 1880. JOSEPH GUTMAN, JR., *Master.*

Endorsed: United States circuit court, southern district of New York. In equity. George H. Wooster *vs.* Wm. S. Thomson *et al.* Affidavits, &c., & report on application to open proofs. U. S. circuit court. Filed Dec. 10, 1880. Joseph M. Deuel, clerk.

165 U. S. Circuit Court, South. Dist. New York.

GEORGE H. WOOSTER
vs.
WILLIAM S. THOMSON, CHAS. H. LANGDON, GEORGE C. BATCHELDER, and ALLEN E. HEWITT.

Exceptions by and on the part of the defendants in the above-entitled suit to the report of Joseph Gutman, Jr., Esq., master, to whom said cause was referred by an order entered at ——.

First. The said defendants except to the findings and report of the said master, as stated in his said report, that he finds and reports that during the period mentioned therein there was no means known or used, or open to the public to use, for folding cloth, or strips of cloth, on each edge, besides the double guide or folder mentioned and claimed in the complainant's patent sued upon, other than folding such strips in such manner by the hand of the operator,
166 whereas the said master should have found and reported that such strips could have been so folded by means of a single guide or folder, and that the use of such guides were known and used and open to the public long before the year 1877, and such guides were not within the complainant's patent and were no infringement thereof.

Second. The defendants further except to said report for that the said master finds and reports the sum mentioned therein as the profits derived by the defendants from the use of the double guide or folder, notwithstanding the fact that it appeared that folded strips, such as those used by the defendants, were an article of merchandise, and were cut and folded by different parties at a charge of

cutting and folding of twenty-five cents for 144 yards, or less than one-sixth of a cent per yard.

Third. The defendants further except to said report for that the said master finds and reports the sum mentioned therein as the profits derived by the defendants from the use of the double guide or folder, whereas the said master should not have found and reported as profits any amount greater than the saving made by the use of the double guide as compared with the use of a single guide, or than the amount or sum for which the strips made by the defendants could have been cut and folded by persons doing such business.

Fourth. The defendants further except to said report for that the said master finds and reports the sum assessed therein as damages, notwithstanding the fact that it appeared that the defendants had never in use at any time more than four double guides, and generally only three such guides.

J. C. CLAYTON,
Solicitor for Defendants.

S. D. LAW,
Of Counsel.

(Endorsed:) U. S. circuit court, south. dist. New York. George H. Wooster *vs.* William S. Thomson *et al.* Exceptions to master's report. J. C. Clayton, sol'r for def'ts. S. D. Law, of counsel for def'ts. U. S. circuit court. Filed Jan. 10, 1881. Joseph M. Deuel, clerk.

167 United States Circuit Court, Southern District New York.

GEORGE H. WOOSTER *vs.* WILLIAM S. THOMSON and Others.

Further exception on the part of the defendants in the above-entitled suits to the report of the master, Joseph Gutman, Jr., Esq.

The said defendants except to the finding and report of the said master, in that he finds and reports the sum mentioned therein as the *profits* made by the defendants, whereas he should have found and reported that the complainant had failed to prove, and show by sufficient proof, that the defendants had made *any profits* from the use of the double guide, described in complainant's patent.

J. C. CLAYTON,
Solicitor for Defendants.
S. D. LAW,
Of Counsel.

Jan. 31, 1881.

(Endorsed:) U. S. C. C., S. D. N. Y. Wooster *v.* Thompson *et al.* Exceptions to master's report. U. S. circuit court. Filed Jan. 31, 1881. Joseph M. Deuel, clerk.

168 U. S. Circuit Court, S. D. N. Y.

GEORGE H. WOOSTER *vs.* WILLIAM S. THOMPSON *et al.*

On motion of defendants' solicitor, it is ordered that the hearing of this cause on exceptions to master's report be adjourned to Friday, February 11th, and also that the motion to refer back the cause to the master stand for some time.

It is further ordered, on motion of complainant's solicitor, that the exception to the master's report filed January 31st, 1881, be, and the same hereby is, ordered to be marked as taken off the files of this court, as not regularly filed in time required by the rules of court.

SAM'L BLATCHFORD.

Form approved:
F. H. B.
J. C. C.

169 Endorsed: U. S. C. C., S. D., N. Y. Wooster *vs.* Thomson. Order adjourning hearing of exceptions to master's report. U. S. circuit court. Filed Feb. 4, 1881. Joseph M. Deuel, clerk.

170 U. S. Circuit Court, South. Dist. New York.

GEORGE H. WOOSTER
vs.
WILLIAM S. THOMPSON, CHARLES H. LANGDON, *et alia.*

SIR: Please take notice that on the papers in this cause, and the testimony heretofore taken therein before the master, and on the affidavits of Joseph C. Clayton, William A. Nettleton, William A. Batcheller, and Henry L. Brevoort, copies of which are hereto attached, a motion will be made before the court on Friday, the 14th day of January inst., at 11 a. m. of that day, or as soon thereafter as counsel can be heard, for an order that the said cause be referred back to the master to take further testimony in reference to the questions of the profits and damages with which the defendants are chargeable under the order of reference heretofore made in said cause, or for such other order as may be agreeable to equity and
171 good conscience.

Dated Jan'y 10, 1881.

Yours, &c., J. C. CLAYTON,
Sol'r for Def'ts.

BETTS, ATTERBURY & BETTS, *Sol'rs for Compl'ts.*

172 U. S. Circuit Court, Southern District of New York.

GEORGE W. WOOSTER
vs.
WILLIAM S. THOMSON, CHARLES H. LANGDON, GEORGE C. BATCHELLOR, and ALVIN E. HEWITT.

SOUTH. DIST. OF NEW YORK, } ss.:
City of New York, }

William A. Nettleton, of Bridgeport, State of Connecticut, and superintendent of defendants' factory at said Bridgeport, deposes and says:

I have heretofore, on the 24th day of November, 1880, made an affidavit in this cause, setting forth the result of certain trials made

at said factory in November last as to folding strips of cloth upon both edges by the hands only of the operator without the use of any guide or folder, such strips being the same in form as those made by said defendants from 1877 to 1879 by means of a folder or guide, which folded both edges at one and the same operation. Such affidavit also gave the quantity of such folded strips which were folded by hand during the time mentioned therein, accompanied by an estimate of the cost of the labor for folding such strips on both edges by hand. The trials mentioned in my said affidavit
173 were but three in number, and were made for only a limited or short length of time, the longest trial being for but one hour; but the actual quantity or number of yards folded by the hands of the operator during the several times mentioned in said affidavits, and as set forth in said affidavits, are correct. A copy of my said affidavits made on the 24th of November last, is attached hereto.

The several trials mentioned in my former affidavits having been continued each for only a short length of time, I have, since making my said former affidavits, and at the request of the counsel of defendants, had made at said factory of defendants and under my directions, further and more extended and longer continued trials in folding such strips on both edges by the hands alone, without the aid of mechanism, for the purpose of more accurately and exactly determining how much of such folded material can be made by hand when the operator works continuously for the whole day and day by day for a number of days in succession. The result obtained from such fuller and more extended trials, and the actual cost of folding the strips by hand, appears from this present affidavits.

In such new and longer continued trials the folding of the edges of the strips was done, as in the trials mentioned in my former affidavits, entirely by hand, without the use of any guide or folder, and the work was done by two operators, each and both of whom worked at such folding during each day for six days in succession. One of said operators was Emma Seitz, the same person who made the trials mentioned in my former affidavits, and who has been in the employ of defendants for some two years or more, and is usually employed in stitching corsets, and has been accustomed to fold by hand the edges of cloth, as such work is more or less required in stitching corsets; the other of said operators was a young girl by the name of Mamie Brady, who has been heretofore in the employ of de-
174 fendant for a few months, and was then employed in folding strips of cloth over the front clasps or steels of corsets preparatory to the sewing of such strips along the other or back edge of such steels, but who had had no previous experience in folding the edges of strips of cloth to be sewed upon the corsets to form the bone pockets.

The said operatives worked, each of them, the first day eight and a half hours, and on the second day nine and three quarter hours, and on each of the following three days ten hours, and on the sixth or last day nine and three quarter hours.

The quantity of strips, or number of yards, folded on each edge by said Emma Seitz during said six days was as follows:

On the first	day	8½	hours	1,080	yards.
" second	"	9¾	"	1,154	"
" third	"	10	"	974	"
" fourth	"	10	"	1,155	"
" fifth	"	10	"	1,184	"
" sixth	"	9¾	"	1,150	"

or an average of 1,157 yards per day of ten hours.

The number of yards of such strips folded by said Mamie Brady during said six days, were as follows:

On the first	day	8½	hours	509	yards.
" second	"	9¾	"	562	"
" third	"	10	"	506	"
" fourth	"	10	"	621	"
" fifth	"	10	"	606	"
" sixth	"	9¾	"	564	"

or an average of 574 yards per ten hours.

Mamie Brady is paid fifty cents per day for her labor, and other girls equally capable of performing the same kind of labor can be readily hired at the same wages.

The quantity or number of yards of such strips which could be folded by operatives of the class to which Mamie Brady properly belongs would undoubtedly increase as they became more accustomed to such work.

But assuming the last quantity produced, that folded by
175 Mamie Brady, to be the average quantity which could be folded per day of ten hours, the actual cost, at the rate of wages paid such operatives, of folding such strips on both edges by hand, and without the use or aid of any guide or folder, is less than one-tenth of a cent per yard.

And at such rate of production, even supposing that there would be no increase by reason of experience and acquired skill, the whole quantity of strips folded by the defendants from January, 1877, to April, 1879, say six hundred and seventy-five working days, with the double folding guides—estimated as being 1,217,870 yards—could have been folded by hand by three one-tenth girls, folding no faster than said Mamie Brady did in the trial before mentioned, and at a cost of $1,046.25.

Deponent further says that he has also, since the making of his former affidavits, had a trial made at defendants' manufactory to determine what quantity of strips, such as those before referred to, could be folded day by day, and for days in succession, by means of a double guide, or a guide folding both edges of the strip at the same time; that such trial was continued for two days, and was made by one and the same person, Charles McGuire, whose wages for the past six months have been three and a half dollars per week, and that such trial established the fact that such strips

could be folded by such a double guide to the average quantity of four hundred and nine yards per hour.

That at such average rate of production it would require forty-nine and two-third weeks to fold by, or with a double guide, the whole number of strips, 1,217,870 yards, estimated to have been made and used by defendants from January, 1877, to April, 1879; and that the cost of so folding such whole number of yards would be, at said rate of wages of $3.50 per week, one hundred and seventy-three dollars and eighty-three cents ($173.83).

And that the whole saving to defendants by folding such quantity, 1,217,870 yards, by or with a double folding guide, as
176 compared with the cost of folding the same quantity by hand would be eight hundred and seventy-two dollars and forty-two cents ($872.42).

Deponent further says that the estimates contained in his former affidavits were based upon the possible production by hand folding of 1,600 yards per day; while the estimates contained in his present affidavits are based upon the production by hand folding of only 574 yards per day, the quantity folded, as before mentioned, by the least skillful operator, Mamie Brady.

(Signed) WM. A. NETTLETON.

Subscribed and sworn to before me, this 4th day of January, 1881.

[L. S.] (Signed) JAMES T. LAW,
Notary Public, New York.

(Endorsed:) U. S. circuit court, south. dist. New York. George W. Wooster *v.* William S. Thomson *et al.* Affidavit of Wm. A. Nettleton. Dated Jan. 4, 1881.

U. S. Circuit Court, S. Dist. N. Y.

GEORGE H. WOOSTER,
vs.
WILLIAM S. THOMPSON, CHARLES H. LANGDON, GEORGE C. BATCHELLER and ALVIN E. HEWITT. } In Equity.

COUNTY OF FAIRFIELD, }
City of Bridgeport, State of Connecticut, } *ss:*

William A. Nettleton, being duly sworn, deposes and says: That he is about 48 years of age, and resides at Bridgeport, Conn., and is superintendent of defendant's factory for the manufacture of corsets, as carried on in said factory, and that he is acquainted with the course of business and practical manufacture of corsets, as
177 carried on in said factory; that deponent started said factory and organized said operation, and has been acting superintendant of said factory throughout its existence since it began about January, 1877.

Deponent further says that under his personal direction and superintendence he has, during the past week, caused certain experiments to be made at said factory for the purpose of determining the cost

of labor of folding strips of jean, upon both edges, by hand alone, without the use of any guide or folder other than the fingers, turning over the edges of the strips upon a table.

That during these experiments, to his personal knowledge, one of the girls in the said factory (without any previous experience of the art) did, with her fingers, upon an ordinary flat wooden table, without any mechanical appliance (except a thimble to protect the fingers), take strips of jean, about an inch and a half wide, and fold a hem on each edge at the rate of sixteen hundred yards per day of ten hours.

That the first experiment above referred to was made on the 16th day of November, A. D. 1880, by Emma Seitz, a young girl employed ordinarily as a stitcher; that on that occasion, by actual count and accurate timing, she folded, precisely as above described, eighty yards of such strips in twenty-seven minutes; that allowing eighty yards per thirty minutes, the amount said girl could fold in a day of ten hours (which is the working time in said factory) is 1,600 yards of said strips.

That in like manner the said Emma Seitz did, on the 23d day of November, 1880, fold eighty-seven yards of the said strips in thirty-two minutes, which would beat the rate of 1,740 yards in a day of ten working hours.

That on this 24th day of November, the said Emma Seitz did, in precisely the same manner, fold on both edges, in one hour, 189 yards of the same jean strips $\frac{7}{8}$ of an inch wide, which would be at the rate of 1,890 yards per day of ten working hours.

178 Deponent further says that the strips hereto annexed are some of the identical strips folded, as above stated, by the said girl. Deponent now marks them "William A. Nettleton, A."

Deponent further says that the average rate of wages for girls adapted to fold strips, as above described, is about $3 per week; that the average of the above three experiments is at the rate of 1,743+ yards per day of ten working hours; that 1,600 yards per day can be made at 50 cents wages, and the cost per yard for the labor of folding said strips, as above described, would be at the rate of $\frac{1}{3\,2}$ of a cent per yard.

Deponent further says that, from his knowledge of the above experiments and of the art and practice of folding strips, as above described, he verily believes that it is perfectly possible and practical, after but short practice, for little girls, worth in wages $3 a week, to fold such strips at or about the said average rate and costs.

Deponent further says that at this rate one girl could fold by hand, in the time covered in the decree, (Jan., 1877, to April, 1879,) say 675 working days, 1,176,525 yards, at a cost of $337.$\frac{50}{100}$.

That the total quantity of strips estimated in deponent's former testimony to have been made by defendants up to injunction was 1,217,870 y'ds; that upon the above basis this would require labor equivalent to 1 and $\frac{1}{3}$ girls, or $449.$\frac{50}{100}$.

But allowing for margin, that it would require two girls, the cost would be $6.75 for the entire labor of folding the said total amount of 1,217,870 yards.

Deponent further says that he verily believes that two girls at $4 per week each could have readily folded all the strips required or used by defendants in the same way, as above described, by hand.

Deponent further says that he estimates and believes that the profit by use of the double folder sued upon is the wages saved of one girl at $4 per week, and no more.

179 Deponent further says that the above-described strips, samples of which are annexed, as above stated, are identical in all respects with the strips used for sewing on corsets to form the bone pockets, such as defendants used upon their corsets during the period covered in the decree herein.

Deponent further says that from careful calculation he knows that the total cost of the said average strips folded on both edges by hand, as above described, is at the rate of about 70 cents per 144 yards, which is less than ½ of a cent per yard.

WM. A. NETTLETON.

Subscribed and sworn to before me, this 24th day of November, A. D. 1880.

[L. S.] J. B. PRINDLE,
Notary Public.

(Endorsed:) U. S. circuit court, south. dist. New York. George H. Wooster *vs.* William S. Thompson *et al.* Affidavit of Wm. A Nettleton. Nov. 24, 1880.

U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER *v.* WILLIAM S. THOMPSON *et al.*

STATE OF CONNECTICUT, } *ss:*
County of Fairfield, City of Bridgeport, }

William H. Batcheller, being duly sworn, deposes and says: That he is the same William H. Batcheller who made an affidavit herein on the 24th day of November, 1880.

That since he made his former affidavit he has had charge of further and more extended trials in folding strips such as are used at defendants' manufactory, which trials were made by Charles

180 McGuire, who is a boy in the employment of the defendants; that said trials were conducted under affiant's personal care and supervision, so that he can testify in regard thereto and their results in all respects. The object of the said trial was to ascertain the relative capacity of the "double guide" used to fold at one operation both edges of the strips of cloth used to form the bone pockets of corsets, and the "single guide" used to fold separately each edge of similar strips, two operations being required.

The said boy is regularly under my direction and supervision, and it is now, and for some six months has been, his business to fold such strips. During said trials I supplied him with the material to be folded, and maintained watch over him, and had a memorandum at the time of the lengths of the strips folded and the time

occupied in so doing. From my personal knowledge, and said memorandum, I can and do testify as follows:

During three consecutive days the said boy, working an aggregate of twenty-six hours and twenty minutes, folded strips of cloth on both edges, by means of *single* guides, amounting to 7,124 yards.

In those trials the strip had one edge drawn through a single guide by means of a reel, and then had the other edge drawn through a narrower single guide, in this way: first one edge and then the other was folded, as is the more particularly described in my former affidavit in this case.

Affiant further says that the said boy, during two other consecutive days, working an aggregate of sixteen hours, folded strips of cloth on both edges by means of "*double* guides," amounting to 6,545 yards.

In these trials the strips were drawn through the "double guide" by means of the same reel, and both edges were folded simultaneously, and in the manner more particularly described in my former affidavit.

181 A calculation based upon the above figures will show that when the "single guides" were used and the strip passed through twice, folding one edge at each passage, the said boy averaged 274 yards per hour, while by the "double guide" the same boy averaged 409 yards per hour.

Affiant says that from the above trials and calculations, and from his experience and careful observation, he is prepared to say, and does say, that, as a matter of business, the capacity for folding by the "single guide," used twice, is fully equal to one-half that of the "double guide," used once; that he verily believes there is practically no difference in result as to the quality of the work produced, whether the "single guide" is used twice or the "double guide" is used once.

Deponent further says that he verily believes that the above detailed results are fair averages of the work, comparing the "single folder" with the double folder work; that in each set of experiments the said boy worked with equal fairness and rapidity, and that deponent believes the same rate of speed could be kept up from day to day as long as required.

Deponent further says that the said boy is about seventeen years of age, and that his wages for the past six months has been three dollars and a half per week.

WM. H. BATCHELLER.

STATE OF CONNECTICUT, *Bridgeport, Fairfield County:*

On this 5th day of January, A. D. 1881, personally appeared before me, the undersigned, Wm. H. Batchelder, to me known, who signed the foregoing deposition in my presence and made solemn oath to the truth of the matters therein contained.

In witness whereof, I have hereto set my hand and affixed my seal of office.

[L. S.] DAVID B. LOCKWOOD,
Notary Public.

(Endorsed:) U. S. circuit court, south. dist. N. York. George H. Wooster *v.* William S. Thompson *et al.* Affidavit of Wm. H. Batcheller. Jan. 5, 1881.

182 United States Circuit Court, S. Dist. New York. In Equity.

GEORGE H. WOOSTER
vs.
WILLIAM S. THOMPSON, CHARLES H. LANGDON, GEORGE C. BATCHELLER, ALVIN E. HEWITT.

DISTRICT OF CONNECTICUT, }
County of Fairfield, } *ss:*

Wm. H. Batcheller, being duly sworn, says: I am 31 years of age; reside at Bridgeport, Conn., and am in the employ of the defendants, Thompson, Langdon & Co., at their corset manufactory, in said Bridgeport, and have been in the employ of said company for nearly three years last past, and now have charge of the cutting and folding of the strips which are sewed upon corsets to form the pockets in which the bones are inserted, and that deponent has had charge of such particular work since about the first Jan. last, and succeeded in such department G. Albertus Close, who is now engaged in said manufactory as a cutter.

That deponent has knowledge of the folding guides which have been used by the defendants at their said manufactory since deponent has been employed there, for folding the strips before referred to, and is familiar with their construction and operation.

Deponent further says that the folding guides which have been used at defendants' factory for folding the strips to be sewed upon corsets to form the bone pockets do not press and flatten the folded strips, and that such folding guides have no tongue or me-
183 chanical contrivance or device attached to or connected therewith for pressing and flattening the folded strips as they pass from the folding guides, or which effect such purpose, and that the pressing and flattening of such folded strips is wholly effected by causing the strips, after they have passed through the folding guides, to be drawn downward over the edge of the metal table or base upon which the folding guide is placed, and then winding the strips upon a reel, by the turning of which the strips are also drawn through the folding guide.

Deponent further says that he has carefully examined the folding guide which is represented to deponent to be our exhibit in this case (and which deponent has marked with the letter A, scratched thereon), and that said guide is not so constructed that it will press and flatten the folded strip, and has no tongue or other mechanical device or contrivance attached thereto, or made part thereof, which acts to press or flatten the folded strip; that the opening at the delivery end of said guide, between the lower and under half of the flattened tube and the bottom plate of the guide, is evidently merely accidental, the flattened tube not having been fully soldered to the bottom plate, and that the lower or under half of such flattened tube

in such guide should have been closely and fully soldered to the bottom plate, as is seen in the folding guides hereto annexed, marked A A, on the back thereof, and which is a guide that has been used by defendants at their manufactory, and that the lower or under half of the flattened tube, as now existing in the said guide, marked with the letter A, though not fully soldered across its whole end to the bottom plate, does not and cannot in any way act to press and flatten the folded strip as it passes through or from such guide.

Deponent further says that on the 23d day of November inst. he caused a continuous piece or strip of cloth to be passed through such guide, marked A, without permitting such strip, after it
184 had passed through such guide, to be drawn downward over the edge of the metal base plate up which the guide was passed and there wound upon a reel, and that the condition of the said strip, after it had so been passed through such guide, is shown by the several pieces, marked 1, 2, 3, 4, 5, and 6, which pieces are a part of the continuous strip so passed through said guide, and were cut into short pieces to permit them to be placed in a box in which they could be carried without a change in their condition, and that the coil or roll, marked 7, shows a portion of the same strip passed through the same guide and then drawn downward over the edge of the base plate and wound upon a reel.

Deponent further says that on the same day he caused a continuous piece or strip of the same material as that before referred to as passed through the guide marked A, to be passed through the guide marked A A, in the same manner; that is, without permitting the folded strip, after it had been passed through the guide, to be drawn downward over the edge of the supporting base plate, and then wound upon a reel, and that the strips 8, 9, 10, 11, and 12, which were cut from such continuous piece, show the condition of the strip after it had been so passed through such guide, and that the roll marked 13 shows a further portion of such strip, passed in the same manner through such guide marked A A, and then drawn downward over the edge of the supporting base plate and then wound upon a reel.

Deponent further says that on the same day he caused a continuous strip of cloth to be passed though a folding guide, which turned over each edge of such strip, but without permitting such folded strip, after it had passed through such guide, to be drawn downward over the edge of the supporting metal plate, and then wound upon a reel, and that the pieces marked 14, 15, 16, 17, 18, 19, and 20, which were cut from such continuous strip, show the condition of such folded strip after it had so been passed through such double guide or folder, and that the roll marked 21 shows a further position of the same strip, passed in the same manner through such double folder, and then drawn downward over the edge of the supporting base plate and wound upon a reel.

185 Deponent further says that the folding guides or folders which have been, and which are now, used in the manufactory of said defendants, have the effect to only turn or fold the edge of the strip passed through such guides, and not to press and flatten

the folded strip, and that folded strips as delivered from such folders or folding guides are not in a condition suitable for being sewed upon corsets, and could not be sewed upon corsets by a sewing-machine continuously, as such strips are now sewed upon such articles, and that such strips, after they are passed through such folders, must be pressed or flattened by some device adapted for such purpose, and that such strips are pressed and flattened at defendants' manufactory by being drawn, after they have been passed through the folder, downward over the edge of the supporting metal base plate and then wound upon a reel.

WM. H. BATCHELLER.

Subscribed and sworn to before me, this 24th day of November, 1880.

[L. S.] J. B. PRINDLE,
Notary Public.

Endorsed: U. S. circuit court, south. dist. N. York. George H. Wooster *v.* William S. Thomson *et alia*. Affidavit of W. H. Batcheller. Nov. 24, 1880.

U. S. Circuit Court, South. Dist. New York.

GEORGE H. WOOSTER
v.
WILLIAM S. THOMPSON, CHARLES H. LANGDON, GEORGE C. BATCHELLER and ALVIN E. HEWITT.

SOUTHERN DISTRICT OF NEW YORK, } ss:
City of New York, }

Henry L. Brevoort, being duly sworn, deposes and says as follows:

My name is Henry L. Brevoort; I am 31 years of age; I
186 live in the city of Brooklyn; and I am by profession a mechanical engineer; I have for the last eight or nine years been almost exclusively engaged in examining patents and patented inventions, and I have very frequently been called upon to give testimony in regard to patents and machines before the circuit courts of the U. S. both in this and other circuits.

I have carefully read the reissued patent of A. Douglass, dated December 10, 1872, No. 5180, for a folding guide for sewing-machines. I have also read reissued patent No. 6308, granted to George H. Wooster, assignee of Susan A. Robjohn, administratrix of Thomas Robjohn, deceased, which patent is an exhibit in this cause, and I understand the mechanism shown in both of these reissues.

I have also crrefully examined the machine as used by Messrs. Thompson, Langdon & Co., with a single guide, for folding their goods, and I understand the operation of such machine. Such machine I designate and refer to in this my affidavit as the *single-guide machine;* and such machine, in respect to the devices used therewith for pressing and flattening the material folded, is shown in the photographs, exhibits in this case

It is my opinion that the said machine, defendant's machine—"single-guide machine"—does not contain any of the inventions referred to in the reissue No. 6308. My reasons for this opinion are as follows:

In reissue No. 5180 the well-known Douglass guide is shown. This guide consists of a bent piece of metal so constructed as to fold a strip of material fed through it longitudinally along the middle as well as longitudinally along the edge or edges, and the reissue states that such machine will ordinarily be used with a sewing-machine; the reissue also states that guides for turning or hemming one edge of a piece of cloth or other material are not within the invention of Alexander Douglas. Material fed through a guide will not retain its folded condition unless it is by some subsequent act either creased, pressed, or sewed.

187 With the Douglass guide the material is drawn through it by the combined action of the feed mechanism, either four-motion or wheel-feed and presser-foot, essential parts of every sewing-machine, which serve as pressing instrumentalities to crease the folds formed in the goods by the guide, and these folds were made more permanent by the sewing of the goods. If the Douglas guide is not used with a sewing-machine, or with some instrumentality to press the folds made by the guide, the goods would not retain their folded condition; and the Douglass patent does not show or describe any instrumentality for such purpose, except such as may make a part of a sewing-machine. In reissue No. 6308 an invention is described consisting of a pair of fluting rolls used in connection with a guide or guides, which guides either fold one or both edges of the material, and which material is drawn through the guides by the action of the rolls, and is pressed by the rolls in such a way as to cause it to retain the fold given to it by the guide, while at the same time fluting the material; also, the sockets in which the guides are held are provided with tongues, for the purpose of pressing the material before it enters the rolls. The first claim of the reissue No. 6308 relates to a combination which, as I understand it, consists of pressing or drawing-rolls, which draw the strip through the guide and press the fold or folds formed by the guide, and the guide forming an inclosed channel-way for guiding and supporting the material and folding or turning one or both edges of the strip.

The defendants' machine—"single-guide machine"—has a single guide, that is, a guide which turns only one edge of a piece of cloth fed through it, which piece of cloth is drawn through the guide by the reel or revolving spindle, the cloth passing over the edge of the plate to which the guide is attached, and then being rolled up upon the reel or spindle, which is placed below the level of the plate

188 of the guide, and is continually rotated when the machine is in action. This machine, it is evident, does not contain the invention referred to in any of the claims of reissue No. 5180, being the Douglass patent, for the reason that the form of guide used in such single-guide machine is specifically disclaimed in said Douglass reissue, where the reissue says as follows: "Nor do I claim guides for turning or hemming one edge of a piece of cloth or other

material, except when the guide is so shaped as also to simultaneously either fold the material in the center or upon the other edge." It is true that Thompson, Langdon & Co. produce goods folded upon both edges, but they do it, as I learn from the testimony in this case, at different times and upon different machines, and by the use of separate single-folding guides, passing the strip through such guide twice, so that only one edge is folded at each passage, and no center folds are formed.

This machine—defendant's "single guide machine"—does contain the invention referred to in the first claim of reissue No. 6308. if the edge of the guide-plate and rotating spindle are considered as the equivalents of a pair of pressing rolls. I do not think, however, that the device for drawing and rolling of the folded fabric in the "single guide machine" is the equivalent for the drawing rolls referred to in the reissue No. 6308, and for this reason:

Reissue 5180 to Douglas prescribes means for drawing goods through a guide, and for securing the folds made both by pressure and by the action of the needle. If the court should consider that the guide-plate and the rotating spindle of the "single guide machine" are the equivalents of the drawings and *and* pressing rolls of reissue 6308, then I think that the four-motioned wheel, or other feed and presser foot of a sewing machine referred to in the Douglass reissue, can be considered as the equivalent for the pressing-rolls of reissue No. 6308, and with such a view of the case the reissue to Douglass, No. 5180, would show the invention of the first claim of reissue No. 6308. I do not think that such view is cor-
189 rect, but I think that reissue 6308 should be limited to the combination of two drawing or pressing-rolls, with a folding guide. With this view, the machine—defendants' "single guide machine"—would not contain the invention referred to in the first claim of reissue 6308, for it would not have mechanism which would be the equivalent of the drawing and pressing-rolls of such reissue.

I have carefully examined the guide on exhibit in this cause—"Exhibit Single Folder"—and with the letter A marked upon its back, which has a portion of the lower plate of the folded part of the guide partially unsoldered from the base-plate to which such folded part is attached.

This unsoldered portion cannot act, and does not act, as the tongue marked *j* in the reissue 6308, which is specifically arranged so as to press and flatten down the folded strips. The unsoldered of the guide marked A is so bent as only to affect, if at all, the strip passing through the guide at a place upon said strip where no fold is made, to wit, near the middle of the strip, so that even were there any elasticity or spring-like action in the unsoldered portion of the guide, the action of such elastic part could not act upon the folded part of the strip.

It is essential, according to the Robjohn reissue No. 6308, that the tongue *j* should press upon and flatten the folded margins of the strip, and in the reissue the tongue is clearly shown and described as having such action. The machine—defendants' "single guide machine"—does not, therefore, contain the invention referred to in

the second claim of the Robjohn reissue, 6308, even if used with the guide marked A.

The machine—defendants' "single guide machine"—does not contaid the invention referred to in the other claims of reissue No. 6308.

(Signed) HENRY L. BREVOORT.

Subscribed and sworn to before me this 10th day of January, 1881.

(Signed) CHAS. F. WELLS,
Notary Public, New York.

(Endorsed:) Due service of a copy of the within notice & affidavits hereby admitted Jan'y 10, 1881. Service of the within admitted Jan'y 10, 1881. Betts, Atterbury & Betts, comp'ts sol'rs. U. S. circuit court, south. dist. N. Y. George H. Wooster *vs.* William S. Thomson, Chs. H. Langdon, *et als.* Papers on motion for referring back. J. C. Clayton, def'ts sol. U. S. circuit court. Filed Apr. 25, 1881. Joseph M. Deuel, clerk.

190 U. S. Circuit Court, South. Dis. of New York.

GEORGE H. WOOSTER
v.
WILLIAM S. THOMSON, CHARLES H. LANGDON *et al.*

SOUTHERN DISTRICT OF NEW YORK, } ss:
City of New York. }

Joseph C. Clayton, being duly sworn, says: That he is a counsellor-at-law, and the solicitor for the defendants in the above entitled cause.

That on the proceedings before the master, J. Gutman, Jr., under the order of reference in this cause, testimony was introduced which showed that the article, or folded strips of cloth made by the defendants, and which is claimed to have been made in infringement of the letters patent known as the Douglass reissue, owned by the complainant, could be made by the use of a single folding guide, at two operations, first folding one side of the material, and then by a second operation folding the other side, and that such a single guide was not within or covered by the Douglas patent; and that it was also proved on said reference that the said folded strips were and had been made by different parties, as a matter of business, at a charge or cost of about one-sixth of a cent per yard. That deponent, from the testimony taken before the master, was, and still is, of the opinion that the master was only authorized to find that the profits made by the defendants by the use of the double or Douglas guide in folding the strips made by them, was only the saving made by
191 the use of the double folding guide, as compared with the use of the single folding guide, twice, or in two operations, or the price or cost at which such strips would be cut and folded as a matter of business by other parties.

And that the proposed report of the master, as served on deponent, and which has since been filed by the master, as his report in this

cause, greatly surprised the deponent and the defendants, especially in regard to the finding of said master upon the question of profits made by the defendants by the use of the double folding or Douglas guide.

That deponent immediately, and as soon as was possible, on receiving a copy of such proposed report, made a motion before the said master for leave to the defendants to put in further evidence before him, upon the question of profits, and that such motion was supported by affidavits, showing among other things the result of actual trials in folding such strips by hand, and the cost of such folding; such trials, however, being made for only a short length of time, as there was not opportunity within the time permitted to make such motion to make more extended trials, and that said master, after hearing the respective parties on such motion, denied the same.

That deponent, thereupon, for the purpose of making a motion to this court to refer the cause back to the master to take further testimony therein, caused further and more extended trials to be made by the defendants in folding such strips by hand, and also in folding such strips by a single folder at two operations, and by a double folder at one operation, to determine the cost of the said two methods of folding, and that the result of such more extended trial is detailed in the affidavits of William A. Nettleton and William Batcheller, sworn to on the 4th and 5th day of January inst.

That said trials were made and completed some one or two weeks or more before the date of such affidavits, and that this motion would have been made by deponent, and noticed for a day not later than the 24th day of December last, except for the rea-
192 son that deponent was unexpectedly compelled to go on two occasions to Washington to attend to suits pending before the Supreme Court of the United States, and before the supreme court of the District of Columbia; that deponent was necessarily detained in Washington for some days, and upon his return therefrom found his wife and sister-in-law, who is a member of his family, sick so as to require his presence at home with an attack of "malignant sore throat," and that since then both of deponent's children have also been dangerously sick with the scarlet fever, and that for these reasons deponent has not been able to prepare the papers for and make this motion at an earlier date.

Deponent further says that the estimate of the complainant as to the profits made by the defendants by the use of the double folding or Douglas guide, and which estimate appears to have been accepted by the master as the measure of such profits, is believed by him to be wholly extravagant and preposterous, and that the trials made by the defendants as to the actual cost of folding the strips used by them by the hands alone, and without the use of any mechanism whatever, clearly establish that such estimate of complainant is extravagant and not to be relied upon.

And deponent further says that he conscientiously believes that mere justice and right to the defendants demands that the cause be sent back to the master to take further proofs in the said refeeence,

and that without such order the defendants will suffer great injustice and be deprived of their equitable right in the cause.

J. C. CLAYTON.

Subscribed and sworn to before me, this 11th day of January, 1881.

[L. S.] (Signed) JAMES T. LAW,
Notary Public, New York.

(Endorsed:) U. S. circuit court, south. dist. N. York. George H. Wooster *vs.* William S. Thomson, Charles H. Langdon, *et als.* Affidavit of J. C. Clayton. Jan'y 11, 1881. J. C. Clayton, sol'r for def'ts. U. S. circuit court. Filed Apr. 25, 1881. Joseph M. Deuel, clerk.

193 Circuit Court of the United States, Southern District of New York.

GEORGE H. WOOSTER *vs.* WILLIAM S. THOMPSON *et al.*

SOUTHERN DISTRICT OF NEW YORK, } ss.:
City and County of New York, }

George H. Wooster, being duly sworn, says:

I am of mature age, and reside in Staten Island, New York. I am the complainant herein. I am very familiar with machines for making folded trimmings, and I used such machines extensively in my own business from the year 1861 down to 1873. I am familiar with the letters patent granted to me as assignee of Susan A. Robjohn, reissue No. 6308, dated February 23d, 1875. I have frequently testified in regard to said letters patent, and the construction of the devices therein described and claimed in various suits brought thereon, or in suits in which the said letters patent have been put in evidence. I am also familiar with the machine for folding strips of material used by the defendants, Thomson, Langdon & Co., and produced on the hearing before the master, which machine is shown in a photograph put in evidence before the master. I understand the operation of said machine, as it was used with the double-
194 edged folding guides which were decreed to be an infringement upon the Douglas reissue, No. 5180, and also as it was used with the guides for folding the single edge.

Prior to the invention of Robjohn various forms of hemmers and binders for use with sewing machines were well known. The Douglas patent, dated October 5th, 1858, and reissued to me December 10th, 1872, No. 5180, describes and claims a peculiar form of folding guide for guiding and folding narrow strips of raw-edged material. The guide forms an enclosed channel-way which surrounds the material and compels the same to follow the configuration of the channel-way, and the configuration of the channel-way is such that the material has both its raw edges folded over so as to produce a hem, and if desired the material is also folded at or near the centre. Folding guides, which either fold in the centre and on both edges, or on both edges, without folding in the centre, have

been in numerous cases decided to be infringements of said Douglas patent. The Douglas guide was intended to be used and described as intended for use in connection with a sewing-machine. The guide folded material and delivered it near the needle of the sewing-machine. It was drawn through the guide by the feed of the sewing-machine. The operation of folding, for the purposes of trimming or binding materials, was greatly facilitated by the Douglas guide. Whether such guide was used in connection with the sewing-machine, or whether strips of material were drawn through such guide by hand, there was a very great saving effected by the use of the guide, as compared with the folding of similar strips by the hand of the operator. I had a great deal of practical experience as to the expense of manufacturing trimmings, and I know the saving that was effected by the use of the Douglas folding guides, as compared with folding similar strips of goods by hand.

195 Prior to obtaining any Douglas folding guides in my business, I had a great deal of material folded by the hands of operators, women and girls who were skilled in sewing and in using sewing machines. Strips of material for binding or trimming were generally cut in pieces of six yards in length, and prior to the introduction of the Douglas folder I was always accustomed to pay to my operatives for folding bindings, not then required to be done so neatly as nowadays, the sum of five cents on each piece of six yards in length. Wages were not then so high as at present. My experience was, in the practical running of my business, that the average production of operators who were folding strips by hand did not reach one hundred and fifty yards per day. Of course, by special exertions, an operator could somewhat increase the amount, but, as operators ordinarily worked, that was a large average production.

After the introduction of the Douglas folding guide I found that operators could, with less labor, fold a great many more strips of material in the same time than they could by hand, and the work was done with much greater regularity and cleanliness. Owing to the facility for production, however, the price was reduced, and I paid, and continued to pay for many years prior to 1873, the sum of one cent for folding and stitching each piece of material of six yards in length. The prices that I paid, both for folding by hand and also for folding by means of the Douglas binder, were, I believe, the ordinary prices paid by people in similar business at the time. The reissued letters patent granted to me as assignee of Robjohn, No. 6308, described another mode of folding strips of material. This mode differed from the Douglas mode in the following particulars: The Robjohn patent shows guides of a variety of forms, not only the form shown in the Douglas patent, but also guides in the form of enclosed channel-ways, which fold simultaneously both of the edges of the strips of material as they passed through them, and

196 guides which only fold one edge of a strip of material passed through them. The principal point in the Robjohn invention was the combination of a guide which formed the enclosed channel-way for a narrow strip of material with a pair of drawing

and pressing rollers, which would draw the material through the guide, which was combined with it, much more regularly and rapidly than could have been done by hand or by the feed of the sewing-machine, and would at the same time flatten the material on the lines of the folds produced by the folding guide. The guides described in the Robjohn reissue, No. 6308, were not mere hemmers, such as had been used on sewing-machines for hemming the edges of garments, but were guides specially designed for conveying narrow strips of material into the enclosed channel-ways which controlled both edges of said narrow strips of material, and insured the correct delivery thereof in folded condition to the rollers.

The double-edge folding guides of the defendants' machine, as they were used prior to the service of the injunction in this cause, were obvious infringements of the Douglas folding guide, and no contention has ever been made upon that point. All of them were enclosed channel-ways for narrow strips of material, and such enclosed channel-ways were so formed as to fold the material passed through them simultaneously upon both edges. I think it is equally clear that the defendants' machine, both before and after the service of the injunction, embodied the substantial features of the Robjohn reissue, No. 6308. Both the single and double edged folding guide of the defendants form channel-ways for the material, by which both edges of the narrow strip of material were enclosed and controlled as it passed through such guides. The defendants' machine did not, it is true, have a pair of feeding and pressing rolls, but it did have a plain equivalent of such rolls. The gist of the invention of Robjohn was the combination with the folding guides described of a rotating mechanism which continuously drew the material with rapidity through the folding guides, and pressed the folds to an edge. This was not done in any such manner by the feed and presser foot of the sewing-machine, as referred to in the Douglas patent. In the defendants' machine there was in substance one roll, and the place of the other was supplied by the edge of the table of the machine. The single roll or spindle drew the material through the folding guides, and by reason of its location below the table of the machine drew such folded material with considerable pressure over the edge of the table of the machine, and thereby flattened the folds to an edge. The tension of the material sufficient to produce the required pressure for folding the goods to an edge was further insured by the spring pressure between rolls at the rear of the folding guide.

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I annex hereto some drawings illustrating the substantial similarity of the defendants' machine to the combination described and claimed in reissue 6308. Figure 1 is a sectional drawing of the Robjohn reissue; figure 2 is a sectional drawing of a machine in which a plain surface is substituted for one of the rolls of the Robjohn machine, without essentially altering its character; and figure 3 is a sectional drawing of the defendants' machine, which operates in substantially the same way as either of the others.

In making my statement of the saving effected by the defendants by the use of their guides which infringed upon the Douglas patent,

I excluded any savings effected by them by the use of the mechanism of the drawing and pressing mechanism which was used by them. In order to calculate their savings, I made the comparison simply between what they would have had to have paid if they had had their strips folded by hand, according to the usual former practice of the trade, and what they would have had to have paid
198 for folding such strips by the aid of Douglas' guides, as I had ascertained such facts by my own practical experience.

The basis of my calculation of said profits was set out at large in my evidence in this case, and the amount of profits made by the defendants are the savings effected by them on the basis of said calculation, amounting to the sum of $6,089\frac{35}{100}$, on the folding of the edge of one million two hundred and seventeen thousand eight hundred and seventy (1,217,870) yards of material, which was actually folded by them.

GEORGE H. WOOSTER.

Sworn to before me, this 21st day of January, 1881.

HENRY J. THORNTON,
Notary Public, City and County of New York.

Circuit Court of the United States, Southern District of New York.

GEORGE H. WOOSTER *against* WILLIAM S. THOMPSON *et al.*

SOUTHERN DISTRICT OF NEW YORK, } ss.:
City and County of New York, }

Henry S. Brown, being duly sworn, deposes and says: I am 48 years of age, and reside 209 East 126th street, in the city of New York, and do business at No. 12 Lispenard street.

199 From about the year 1860 up to the present time I have been engaged in the manufacture of ruffles, trimmings for ladies' wear, &c., a greater part of the time, and am still so engaged. I am thoroughly conversant with the subject of folding strips of muslin and like material both by hand and by the use of folding-guides. I have had strips of raw-edged material folded by hand, and also by Douglas folding guides, in large quantities. The saving by use of the folding guide is very great.

Strips of raw-edge material can be folded by the use of folding guides, which consist of an enclosed channel-way just turned at the edges, so as to fold the material at each edge, for about the sum of twenty-five cents for 144 yards; a profit can be made at that price.

Goods folded in the same way by hand with anything like nicety costs at least one cent per yard. I have had a girl who could fold 6 yards in a ½ hour, or 120 yards per day of ten hours; but her pay was $6.00 per week, and I considered her expert in her work. I consider a ½ cent per yard for folding on each edge by hand would be much below the value or cost where the necessary regularity is required, and I would not take a contract for 10,000 yards at that price.

There is a great saving in material also, the folding guide being

capable of controlling the edges so as to fold over but a very small portion of the goods, but by hand it is necessary to manipulate and turn over a portion sufficiently wide to take hold of with the fingers. In folding by hand the white goods will necessarily become more or less crumpled and soiled.

HENRY S. BROWN.

Sword to before me, this 12th day of January, 1881.

WM. M. CLARK,
Notary Public for Kings Co.

Certificate filed in N. Y. Co.

200 Circuit Court of the United States, Southern District of New York.

GEO. H. WOOSTER *vs.* WILLIAM S. THOMPSON *et al.*

SOUTHERN DISTRICT OF NEW YORK, } ss.:
City and County of New York, }

Frederic A. Kursheedt, being duly sworn, deposes and says: I am of mature age, and am president and treasurer of the Kursheedt Manufacturing Co., doing business at No. 190, 192, and 194 South Fifth avenue, in the city of New York. I have been engaged in the manufacture of ruffles, folded goods, and plaitings, &c., since about the year 1865, and am still so engaged. I am familiar with the Douglas device or folding guide, which consists of an enclosed channel-way for material just turned at the edges so as to fold the material at each edge at the same time, and also with the operation of hand folding. From my past experience I am able to state that a difference of one-half a cent per yard between hand or finger folding and that done by the folding guide before mentioned is a very low estimate. I should not be willing to contract to make by hand at double that amount or rate and agree to have it all compare in nicety of finish to the folding done by the Douglas folding guide.

FREDERIC A. KURSHEEDT.

Sworn to before me, this 14th day of January, 1881.

CHAS. SPIRO,
Notary Public, N. Y. Co.

201 Circuit Court of the United States, Southern District of New York.

GEORGE H. WOOSTER *vs.* WILLIAM S. THOMPSON *et al.*

SOUTHERN DISTRICT OF NEW YORK, } ss.:
City and County of New York, }

Frederic H. Betts, being duly sworn, says: I am the counsel for the complainant herein. The bill in this case was filed on March 27th, 1879. The motion for injunction noticed on the 4th of April, 1879. On the return day of said motion the defendants

appeared by J. C. Clayton, Esq., and the motion was argued, and an injunction granted on said 4th day of April. The injunction was issued and served on the defendant Langdon, on the 8th day of April, 1879. On May 5th, 1879, J. C. Clayton, Esq., appeared for all the defendants. No answer was ever filed to the bill complained herein, and on the 10th day of June a rule was entered taking the bill *pro confesso*, for want of an answer. On July 29th notice of motion was served upon Mr. Clayton for a decree for want of an answer, and such motion was returnable July 31st. No opposition was made to the entry of the decree, and such decree was entered on August 2d, 1879. On October 7th, 1879, the defendants were ordered by the master to proceed with the accounting before him, and such accounting proceeded from time to time, from the 27th day of October, 1879, until the 3d day of November, 1880,
202 when the case was summed up before the master, and by the counsel for both parties, and submitted to him. Before proceeding with the accounting, I particularly called Mr. Clayton's attention to the master's report in the case of Wooster *vs.* Taylor, which found the same rule and extent of savings or profits as in the present case, and sent him a copy of my printed brief in the case, and informed him that we should proceed upon the same basis in this as in the Taylor case. Numerous attendances were had before the master. No application was made before the master prior to the rendering of his decision upon the accounting (after the argument of counsel), for any extension of time for putting in any other or further evidence on behalf of the defendants, nor was any application made at any time prior to such decision to put in any other evidence that was in fact introduced. After the master had made his report herein, dated November 19th, 1880, and had served a copy thereof on the counsel for the respective parties, a motion was made before the master, which was heard on November 30th, 1880, to reopen the case, which motion was denied, for the reasons specified by the master.

FREDERIC H. BETTS.

Sworn to before me, this 13th day of January, 1881.

[L. S.] THOMAS HUNT,
Notary Public, New York County, New York State.

203 U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER *against* WILLIAM S. THOMSON *et al.*

SOUTHERN DISTRICT OF NEW YORK, } ss.:
City and County of New York, }

Thomas J. Cheek, of mature age, being duly sworn, says:

I am a member of the firm of Cummings & Cheek, manufacturers of furnishing goods, carrying on business at No. 458 Broadway, in the city of New York.

In our business we employ hands to fold strips of raw-edged ma-

terial on two lines or edges, and pay for such folding 12 to 15 cents per dozen pieces by hand without aid of machinery, said pieces averaging from 30 to 38 inches each, or about one cent to 1¼ cents per yard, and that is as low as we can hire it done where any degree of regularity in the folding is required.

THOMAS J. CHECK.

Sworn to before me, this 2d day of February, 1881.

CHAS. SPIRO,
Notary Public, N. Y. Co.

204 U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER *against* WILLIAM S. THOMSON *et al.*

SOUTHERN DISTRICT OF NEW YORK, } ss:
City and County of New York, }

Andrew Comstock, of mature age, being duly sworn, says: He is an attorney by profession.

At the request of the above-named complainant I called upon the firm of Robert K. Davies & Co., manufacturers of furnishing goods, Broadway, corner of Howard street, in the city of New York, to ascertain at what rate said firm was accustomed to pay for folding strips of raw edged material upon two lines or edges by hand without the aid of machinery. I was referred to Mr. Lynch, the superintendent of their factory, and was informed by said Lynch that they paid for such folding from 15 cents and upwards per dozen pieces, said pieces averaging from 30 to 38 inches each, that being the lowest rate they paid. I asked said Lynch if he would make an affidavit to the facts as he had stated them to me, and explained the use I desired to make of the same in this case. He informed me that he and his firm would much rather not "mix up" with what did not in the least concern them, and declined to make an affidavit.

I also called upon the firm of Weill & Ahronson, manufacturers of furnishing goods, doing business at No. 36 Lispenard street, N. Y. city, and was informed by Mr. Edward Ahronson that his
205 firm employed girls to fold strips of raw-edged material on both edges by hand, and paid from 15 cents to 18 cents per dozen pieces from 30 to 38 inches in length, being at the rate of about 1¼ to 1½ cents per yard; he also declined to make affidavit as against neighbors, but said, "You can rely upon that price as being the usual price paid for such work by manufacturers generally in the city."

Deponent further says he also called upon Mr. Humphrey, of the firm of W. M. Humphrey & May, of 97 Franklin street, said city, and was informed that his firm employed girls to fold strips of raw-edged material by hand, and paid at the rate of from 15 cents to 18 cents per dozen pieces for such labor, said pieces averaging from 30 to 38 inches each, or about 1¼ to 1½ cents per yard; he did not refuse

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Roll Sm. Pair of Rolls.

Fig. 1.

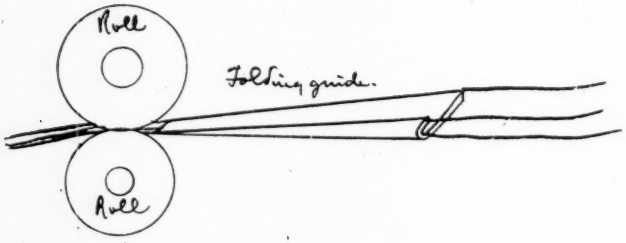


Fig. 2.

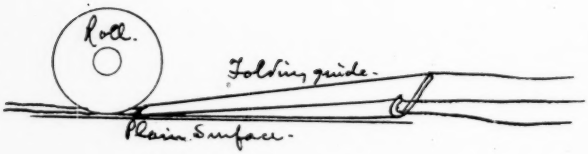
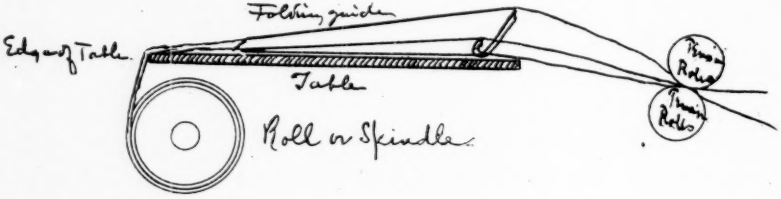


Fig. 3.



No. 112
Thomsonstal
or
Wooster
} p 206.

to make an affidavit, but informed me he would rather not, saying he believed that was the universal price paid by manufacturers in this city, and that I could get plenty of proof to that effect.

And from inquiries by me made of the persons and firms above mentioned and others, deponent verily believes that strips of raw-edged material cannot be folded by hand, without the aid of machinery, for less than from one cent to one and one-half cents per yard, or procured to be so folded.

ANDREW COMSTOCK.

Sworn to before me, this 3d day of February, 1881.

CHAS. SPIRO,
Notary Public, N. Y. Co.

(Here follows diagram, marked page 206.)

207, 208 Circuit Court of the United States for the Southern District of New York.

GEORGE H. WOOSTER *vs.* WILLIAM S. THOMSON and others.

BLATCHFORD, J.: The motion to refer the case back to the master for further testimony is denied. The exceptions to the report are overruled, and a decree is ordered for the plaintiff for the profits reported, but not for the damages.

209 *Affidavit of Service.*

U. S. Circuit Court, South. Dist. of New York.

GEORGE H. WOOSTER, Plaintiff,
against
THOMSON, LANGDON *et al.*, Defendants.

CITY & COUNTY OF NEW YORK:

Frank J. Stott, being duly sworn, says: That on the 27th day of April, 1881, at Warren street, city, he served the annexed bill of costs & notice of taxation, which is hereunto annexed, on the solicitor for the defendant in this action by leaving copies of the same at the office of J. C. Clayton, the solicitor for the defendants herein. He further says that he knew the person served as aforesaid to be the person mentioned and described as solicitor in this action.

FRANK J. STOTT.

Sworn before me, this 29th day of April, 1881.

THOMAS HUNT,
Notary Public, New York County.

210 *Bill of Costs and Disbursements.*

U. S. Circuit Court, South. Dist. New York.

GEORGE H. WOOSTER *vs.* WILLIAM S. THOMPSON *et al.*

Docket fee	$20 00

Disbursements.

Master's fee on accounting	200 00
Filing bill of complaint & issuing subp.	5 65
Marshal's fee serving subpœna	2 12
Filing 2 notes of issue	20
Entering rule in rule book (*pro confesso*)	25
Entering order for pre. inj., 5 fols.	85
Issuing preliminary injunction, 3 fols.	1 45
Marshal's fee for serving injunction	2 12
Filing interlocutory decree, 6 fols.	90
2 depositions before master on acc't'g	5 00
6 aff'd's in opposing motion to reopen master's rep't	75
1 aff'd't on entering rule in rule book	25
Entering final decree	50
Cl'k's fees on entering judg't	6 50
	$246 44

Taxed at two hundred and forty-six dollars and forty-four cents, this 29th day of Ap'l, 1881.

JOHN A. SHIELDS,
Dep'ty Clerk.

211 CITY AND COUNTY OF NEW YORK, } ss:
Southern District of New York, }

Thomas Hunt, being duly sworn, deposes and says: That he is a clerk in the office of Betts, Atterbury & Betts, the solicitors for the complainant herein; that the foregoing disbursements have been made in this action, or will be necessarily incurred therein, to the best of his knowledge & belief.

THOMAS HUNT.

Sworn to before me, this 28th day of April, 1881.

[SEAL.] THOMAS REID,
Notary Public (17), *N. Y. Co.*

Endorsed: Please take notice that the within bill of costs & disbursements will be presented for taxation to Joseph M. Deuel, Esq., the clerk of the U. S. circuit court, south. dist. of New York, in the Post Office Building, in the city of New York, on Fri., Ap'l 29th, at 10 o'clock in the forenoon. Yours, etc., Betts, Atterbury
212 & Betts, compl't's sol'rs. To J. C. Clayton, Esq. U. S. circuit court, south. dist. of New York. George H. Wooster *vs.* Thomson, Langdon, *et al.* Bill of costs & notice of taxation. Betts,

Atterbury & Betts, sol'rs for compl't, 120 Broadway, New York. Due service of a copy of the within bill of costs & disbursements, & of the notice of taxation of costs, is hereby admitted. N. Y., Ap'l 28, 1881. U. S. circuit court. Filed May 5, 1881. Joseph M. Deuel, clerk.

213 *Affidavit of Service.*

U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER, Plaintiff,
against
WILLIAM S. THOMSON *et al.*, Defendants.

CITY & COUNTY OF NEW YORK, *ss.:*

Frank I. Stott, being duly sworn, says: That on the 28th day of April, 1881, at 7 Warren St., New York city, he served the annexed proposed final decree on the solicitor for the ——, showing the same to him, and by defendants in this action by delivering a copy of the same to the person in charge of his office, and leaving the same with him.

FRANK I. STOTT.

Sworn before me, this 29th day of April, 1881.
[L. S.] THOS. REID,
Notary Public (17), *N. Y. Co.*

214 At a circuit court of the United States, held in and for the southern district of New York, at the court-house in the city of New York, on the 29th day of April, 1881.

Present: Hon. Samuel Blatchford, circuit judge.

GEORGE H. WOOSTER
vs.
WILLIAM S. THOMSON, CHARLES H. LANGDON, GEORGE C. BATCHELLER, & ALLEN S. HEWITT, composing the firm of Thomson, Langdon & Co.

This cause having come on to be finally heard, upon the pleadings, proceedings, master's report, and exceptions thereto on the part of defendants, and on a motion by the defendants to remand the cause to the master to take further proofs on the hearing before him, after hearing S. D. Law, Esq., & J. C. Clayton, Esq., in support of said exceptions to said master's report and of said motion, and Frederick H. Betts, Esq., opposed, it is—

215 Ordered, that said exceptions and each of them be overruled; and it is further ordered, adjudged, and decreed that said master's report, so far as the same computes, ascertains, and reports the profits and gains derived and realized by the defendants from the infringement of the complainant's letters patent set forth in said bill, be in all things confirmed, and that the complainant do recover of the defendants the sum of six thousand and eighty-nine $\frac{35}{100}$ dollars, together with interest thereon from the date of said mas-

ter's report, amounting to the sum of one hundred and fifty-two $\frac{22}{100}$ dollars, and also the costs and disbursements of this suit, as taxed, amounting to two hundred and forty-six $\frac{44}{100}$ dollars; amounting in all to the sum of six thousand four hundred and eighty-eight $\frac{1}{100}$ dollars, and that the complainant have execution and other proper process of the court for the collection thereof.

SAM'L BLATCHFORD.

216 Endorsed: U. S. circuit court, south. dist. of New York. George H. Wooster *vs.* William S. Thomson *et al.* Final decree. Betts, Atterbury & Betts, sol's for comp't, 120 Broadway, New York. Due service of the within proposed decree & notice of settlement is hereby admitted this — day of April, 1881. U. S. circuit court. Filed May 5, 1881. Joseph M. Deuel, clerk.

Please take notice that the within decree will be presented to his honor Judge Blatchford for settlement on the 29th day of April, 1881, in the U. S. circuit court-rooms in N. Y. city at the opening of court on that day.

Yours, &c., BETTS, ATTERBURY & BETTS,
Comp't's Sol's.

To J. C. CLAYTON, Esq., *Def'ts' Sol'r.*

217 U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER
vs.
WILLIAM S. THOMSON *et al.* } In Equity.

It is hereby stipulated and agreed between the respective parties that the various exhibits annexed to the bill, and those used before the master and the court, now on file in above cause, may remain in the custody of the clerk of the U. S. circuit court for the S. D. of N. Y., subject to examination of respective counsel, and that the said clerk shall send the same to the Supreme Court of the United States in time for the hearing of the appeal taken herein to said Supreme Court upon notice from either party to the other.

New York, Oct. 3d, 1881.

BETTS, ATTERBURY & BETTS,
Sol'rs for Compl't.
J. C. CLAYTON, *Sol'r for Defendants.*

218 Ordered accordingly, Oct. 12th, 1881.

ADDISON BROWN.

Endorsed: U. S. circuit court, S. dist. New York. In equity. Wooster *vs.* Thomson *et al.* Stipulation that clerk may retain exhibits, &c. U. S. circuit court. Filed Oct. 12th, 1881. Joseph M. Deuel, clerk.

219 *Appeal to the Supreme Court of the United States.*

U. S. Circuit Court, S. District of New York.

GEORGE H. WOOSTER
vs.
WILLIAM S. THOMSON, CHARLES H. LANGDON, GEORGE C. BATCHELLER and ALVIN E. HEWITT, composing the firm of Thomson, Langdon & Company. } In Equity.

The appeal of the above-named defendants and appellants to the Supreme Court of the United States, respectfully shows:

That upon the 26th day of March, 1879, the said complainant filed his bill of complaint in this court against the above-named defendants, charging them with infringing reissued letters patent No. 5180, granted to complainant on the 10th day of December, 1872.

220 That complainant made a motion herein for a preliminary injunction, which, after hearing counsel for the respective parties, was granted. That said preliminary injunction was issued and was served upon the defendants on or about the 17th day of April, 1879.

That a rule for a decree *pro confesso* was entered herein.

That on the 2d day of August, 1879, a decree ordering an injunction and account, and declaring that said reissued letters patent were good and valid in law was entered.

That [at] sundry times the parties and their counsel appeared and accounted before the master herein.

That on the 10th day of December, 1880, the master filed his report herein.

That thereupon the defendants duly made a motion in this court, upon affidavits and arguments, that this cause be remanded
221 to the master to take further proofs, said motion, papers, and affidavits being duly filed in court; and that defendants also duly filed their exceptions to the master's reports.

That said motion to remand and the said exceptions were argued together on the 11th day of February, 1881; that the court held the matters under advisement, and on the 25th day of April, 1881, filed an opinion denying the motions to remand, overruling the exceptions and affirming the master's report in respect to the amount of profits reported by him.

That on the 5th day of May, 1881, a final decree was filed herein against the defendants for profits, interest, and costs, and in favor of complainants, amounting in all to the sum of six thousand four hundred and eighty-eight $\frac{1}{100}$ dollars.

Wherefore these defendants and appellants appeal from the whole of said decree, and respectfully pray that the said decree and
222 the pleadings, proofs, and each and all of the depositions, motion-papers, affidavits, decrees, and all proceedings in this cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decrees of the circuit court, and

every part thereof, may be reversed and a decree be made dismissing said bill with costs, or such other decree as to said Supreme Court shall seem just.

J. C. CLAYTON.
Sol'r for & of Counsel with Defendants & Appellants.

Dated N. Y., May 6th, 1881.

The above appeal is allowed.
May 7, 1881. SAM'L BLATCHFORD, *C. J.*

(Endorsed:) Appeal of defendants to the Supreme Court of the United States. U. S. C. court, S. dist. N. Y. Wooster *vs.* Thomson *et al.* In equity. U. S. circuit court. Filed May 7, 1881. Joseph M. Deuel, clerk.

223 *Bond on Appeal to U. S. Supreme Court.*

Circuit Court of the United States for the Southern District of New York.

GEORGE H. WOOSTER
vs.
WILLIAM S. THOMPSON, CHARLES H. LANGDON, GEORGE C. BATCHELLER, and ALVIN E. HEWITT, composing the firm of Thomson, Langdon and Co.

Know all men by these presents, that we, Charles H. Langdon, of Elizabeth, New Jersey; George C. Batcheller, and David Blake, of New York city, are held and firmly bound unto the above-named George H. Wooster, in the sum of thirteen thousand dollars ($13,000), to be paid to the said George H. Wooster, for the payment of
224 which well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated the sixth day of May, in the year of our Lord one thousand eight hundred and eighty-one. Whereas, the above-named defendants have taken an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above entitled suit by the circuit court for the southern district of New York in favor of the said George H. Wooster for the sum of six thousand four hundred and eighty-eight $\frac{01}{100}$ dollars ($6,488.)

Now, therefore, the condition of this bond and obligation is such that if the above-named defendants shall prosecute their said
225 appeal to effect, and answer all damages and costs (if they shall fail to make good said appeal), then this obligation shall be void; otherwise, the same shall be and remain in full force and effect.

CHARLES H. LANGDON. [L. S.]
GEORGE C. BATCHELLER. [L. S.]
DAVID BLAKE. [L. S.]

Sealed & delivered in presence of—
SAM'L M. HITCHCOCK.
JOHN A. OSBORN.

UNITED STATES OF AMERICA, } ss.:
Southern District of New York, }

Charles H. Langdon and George C. Batcheller, being duly sworn, say that they compose the firm of Thomson, Langdon and Company, trading in the city of New York, and each says for himself that he is worth the sum of thirteen thousand dollars (13,000) over and above all his just debts and liabilities.

CHARLES H. LANGDON.
GEORGE C. BATCHELLER.

Subscribed and sworn to, this 16th day of May, 1881.
[L. S.] JOHN A. OSBORN,
U. S. Comm'r, S. D. N. Y.

226 UNITED STATES OF AMERICA, } ss.:
Southern District of New York, }

David Blake, being duly sworn, deposes and says: That he resides at 415 West 57th street, in the city of New York, and that he is worth the sum of thirteen thousand dollars ($13,000) over and above all his just debts and obligations.

DAVID BLAKE.

Subscribed and sworn to before me, this 6th day of May, 1881.
JOHN A. OSBORN,
U. S. Comm'r, S. D. N. Y.

UNITED STATES OF AMERICA, *S. Dist. N. Y.:*

Personally appeared before me, a U. S. commissioner, the above-named Charles H. Langdon, George C. Batcheller, and David Blake, who jointly and severally acknowledged and executed the
227 above bond, this 6th day of May, 1881, to be their act and deed.
JOHN A. OSBORN,
U. S. Comm'r.

Endorsed: U. S. C. court, south. dist. N. Y. In equity. Wooster *vs.* Thomson *et al.* Bond on appeal to the supreme court. Approved as to form and sufficiency of sureties, this 7th day of May, A. D. 1881. Sam'l Blatchford. J. C. Clayton, sol'r for def'ts & appellants. U. S. circuit court. Filed May 7th, 1881. Joseph M. Deuel, clerk.

228 In the Circuit Court of the United States for the Southern District of New York.

GEORGE H. WOOSTER
vs.
WILLIAM S. THOMSON, CHARLES H. LANGDON, and GEORGE C. BATCHELLER, and ALVIN E. HEWITT, trading as Thomson, Langdon & Co. } In Equity.

By the Honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, to George H. Wooster:

Whereas the above-named defendants have lately appealed to the

Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, made in favor of you, George H. Wooster, and
229 have filed the security required by law.

You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October, A. D. 1881, to do and to receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the circuit court, the 7th day of May, A. D. 1881.

SAM'L BLATCHFORD.

(Endorsed:) U. S. circuit court, south. dist. N. Y. Wooster *v.* Thomson *et al.* In equity. Citation. J. C. Clayton, sol'r for def'ts & appellants. U. S. circuit court. Filed May 7, 1881. Joseph M. Deuel, clerk.

230 U. S. Circuit Court, S. D. N. Y.

GEORGE H. WOOSTER } In Equity.
vs.
WM. S. THOMSON *et al.* }

CITY & COUNTY OF NEW YORK, } *ss.:*
State of New York, }

Thomas F. Farrell, being duly sworn, says that he is a clerk in the law office of J. C. Clayton, Esq., solicitor for defendants in this cause; that on the seventh day of May, 1881, he served true copies of the annexed appeal and citation (and also a true copy of the bond filed herein) upon Betts, Attenbury & Betts, solicitors for complainant, by delivering said copies to a clerk in charge of the office of said solicitors, at their offices, No. 120 Broadway, N. Y. city.

THOS. F. FARRELL.

Subscribed and sworn to before me, this 7th day of May, 1881.

[SEAL.] LEONARD A. GIEGERICH,
Notary Public N. Y. Co. (17).

231 Endorsed: U. S. C. C., S. D. N. Y. In equity. Wooster *vs.* Thomson *et al.* Appeal & citation, with proof of service of appeal, citation, & bond. U. S. circuit court, filed May 7, 1881. Joseph M. Deuel, clerk.

232 UNITED STATES OF AMERICA, } *ss.:*
Southern District of New York, }

I, Joseph M. Deuel, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to two hundred and thirty-one, inclusive, contain a true and complete transcript of the record and proceedings had in said

court, in the case of George H. Wooster, complainant & appellee, against William S. Thomson, Charles H. Langdon, and George C. Batcheller, and Alvin E. Hewitt, trading as Thomson, Langdon & Co., defendants and appellants, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 13th day of October, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the said United States the one hundred and sixth.

[SEAL.] JOSEPH M. DEUEL, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 112. William S. Thomson, Charles H. Langdon, George C. Batcheller, and Alvin E. Hewitt, trading as Thomson, Langdon & Co., appellants, *vs.* George H. Wooster. Filed October 15, 1881.

114-104

U. S. Supreme Court.

No. 112.

OCT. TERM, 1884.

The Original Application, Original Patent and Reissue in Case of

THOMSON *et al.*

vs.

WOOSTER,

Printed in Parallel Columns, and forming a part of Appellant's Brief.

J. C. CLAYTON,
A. Q. KEASBEY,
of Counsel.

Nov. 12, 1884.

NEW YORK:
JOHN POLHEMUS, Stationer and Printer, 102 Nassau St.
1884.

Thomson v. Wooster, No. 112, U. S. Supreme Court, 1884.

THE ORIGINAL APPLICATION OF DOUGLAS, THE ORIGINAL PATENT, AND THE REISSUE PRINTED IN PARALLEL COLUMNS.

ORIGINAL APPLICATION.

☞ *Portions in italics omitted in Reissue and Original Patent.*

ALEXANDER DOUGLAS, OF NEW YORK, N. Y.

ALEXANDER DOUGLAS, OF NEW YORK, N. Y.

LETTERS PATENT No. *21,659*, DATED OCTOBER *5, 1858*. IMPROVEMENT IN FOLDING GUIDES.

Spec., Petition, and Oath as originally filed.

The schedule referred to in these Letters Patent, and making part of the same.

To all whom it may concern:

Be it known that I, ALEXANDER

ORIGINAL PATENT.

Inspection will show many differences between this Patent, and the Reissue and the Original Application.

UNITED STATES PATENT OFFICE.

ALEXANDER DOUGLAS, OF NEW YORK, N. Y.

Improvement in Folding-Guides.

Specification forming part of Letters Patent No. *21,659*, dated October 5, 1858.

To all whom it may concern:

Be it known that I, ALEXANDER DOUGLAS, of the city and county of New York, in the State

REISSUE.

☞ *Portions in italics are not found in Original Application or Original Patent.* There is much other new matter and much omission.

UNITED STATES PATENT OFFICE.

ALEXANDER DOUGLAS, OF NEW YORK, N. Y., ASSIGNOR, BY MESNE ASSIGNMENTS, TO GEORGE H. WOOSTER.

Improvement in Folding-Guides for Sewing Machines.

Specification forming part of Letters Patent No. 21,659, dated October 5, 1858; extended seven years; reissue No. *5,180*, dated December 10, 1872.

To all whom it may concern:

Be it known that I, ALEXAN-

DOUGLAS, of the city, county, and State of New York have invented a new and Improved Folding Guide for folding and turning in two edges of a piece of cloth or other material for binding, or for other purposes, preparatory to sewing; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawing, forming part of this specification, in which—

Fig. 1 is a front view of my improved guide as adapted for binding and inserting two cords within the binding.

Figs. 2 and 3 are opposite end views of the same.

Fig. 4 shows a section of the

of New York, have invented a new and Improved Fixture for Conducting and Folding Cloth to Form Bindings; and I do hereby declare that the following is a full, clear, and exact description of the construction and operation of the same, reference being had to the accompanying drawings, and to the letters of reference marked thereon.

Figure 1 is a side view of my invention. Figs. 2, 3, 4, 5, 6 and 7 are transverse sections. Fig. 8 is a transverse section, showing a different method of construction to be adopted at that end. Fig. 9 is a cross section of a binding as it issues from my fixture.

Similar letters of reference in-

DER DOUGLAS, of the city, county and State of New York, have invented a new and Improved Folding Guide for folding and turning in the edges of a piece of cloth or other material for binding, or for other similar purposes, preparatory to sewing; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawing forming part of this specification, in which—

Figure 1 is a view of my folding-guide so formed as to fold the material simultaneously upon the center and upon both edges. Figs. 2, 3, 4, 5, 6, and 7 are transverse sections of the said guide at the points where the strengthen-

binding and cording applied to the edge of a piece of goods.

Fig. 5 exhibits an end view, corresponding with Fig. 3 of the guide, as adapted for binding without cording.

Similar letters of reference indicate corresponding parts in the several Figs.

This guide is formed by combining and arranging, as hereinafter described, two guides such as are described and claimed in the patent of S. P. Chapin, dated Feb. 19th, 1856.

To enable others to make and use my invention, I will proceed to describe its construction and operation.

The simplest method of constructing my improved guide is

dicate corresponding parts in all the drawings.

My invention consists of a peculiar tube of such interior dimensions and form that it sustains and accurately guides the cloth, (which must be previously cut to the proper width,) and by folds in the said tube *oompels the cloth drawn through it to be folded along three lines*, so as to produce a binding with both edges concealed without destroying the stiffness of the cloth or giving it any disposition to curl. The term "binding" is applied to tapes and strips of leather, which tightly embrace the edges of hats, coats, shoes, &c., and also to strips of cloth or similar material, which are folded and sewed by

ing transverse pieces B. B. &c., are situated, as shown in Fig. 1. Fig. 8 is a cross-section of a binder which is of the same sectional form at both ends. Fig. 9 is cross-section of a binding as it issues from the said guide

Similar letters of reference indicate corresponding parts in the several figures.

To enable others to make and use my invention, I will proceed to describe its construction and operation.

The simplest method of constructing my improved guide is to take a plate of metal, A, of a width somewhat greater than that of the strip or piece of cloth or other material which is to be folded, and have the edges of such

to take a plate of metal, A, say about ten (10) inches in length, and of a width somewhat greater than that of the strip or piece of cloth or other material which is to be folded and have its edges turned in, and turn the whole length of both edges of the said plate towards each other as shown at *a a* in the end view, Fig. 2, leaving just width enough between the two bends *a a* to receive the strip or piece of cloth in the manner indicated by the red line in Fig. 2, which represents a transverse section of the cloth. The plate, having its edges thus turned or bent, has the bent edges turned again, the turn commencing at a short distance from the end shown in Fig 2, and increasing gradually all the way along to the other end, as shown in Figs. 3, 4, 5, 6, and 7. This gives the edges of the said plate the curved and twisted appearance shown in Fig. 1. This piece of metal A is the plate turned toward each other the whole length of the plate. The plate having its edges thus turned or bent has the bent edges turned again on the lines B^2 B^3, the turn commencing at a short distance from the end shown in Figs. 1 and 2, and increasing toward the other end, as shown in Figs, 3, 4, 5, 6, and 7. If it is desired to fold the material in the center the plate may be then again bent at or near the middle, commencing at the end shown in Fig. 2, and gradually increasing all the way along to the other end, as shown in section in Figs. 2, 3, 4, 5, 6, and 7. This gives the edges of the said plate the curved and twisted appearance shown in Fig. 1. This piece of metal A is the their edges loosely upon another piece.

My invention is intended for the production of the second class of bindings, such as are employed in shirts, skirts, &c. The material is generally cheap cloth cut into strips of a uniform breadth. My device folds it so that a perfect binding is produced with both raw edges turned in.

My invention is intended for use in connection with a sewing-machine, and is to be secured to to the table of the latter by any obvious means. In a simple but imperfect form it may be described as a tube of uniform shape from one end to the other, the section whereof is represented by Fig. 7 or by Fig. 8.

ing towards the other end shown in Fig. 3, till at the latter end the bends *a a* are turned towards each other, and the edges of the plate away from one another.

This second bend is represented at *b b'* in Fig. 3. The plate is then again bent near the middle, commencing at the end shown in Fig. 2, and increasing all the way along to the other end where the two bends, *b b*, come nearly together. This gives the edges of the plate the curved and twisted form, shown in Fig. 1. The plate A is strengtened by narrow transverse pieces of plate *c c*, which are secured to its edges and lay as close as practicable to the convex side of the plate, just leaving

A represents the cloth to be folded, and B the metal tube constituting my invention.

The peculiarity of Fig. 8 lies entirely in the mode of constructing the tube, as its effect is precisely similar to that of Fig. 7. The width of the tube on its interior, measuring all the folds, is but little greater than that of the cloth to be folded, and the thickness of the tube, or, rather, of the cavity therein, is but little greater than the thickness of the said cloth. The cloth in its passage through is consequently supported and guided on all parts of its surface. The right extremity, Fig. 1, is in very close proximity to the presser or foot of the sewing machine, so that the folded

guiding-surface of the folder. Its shape and folds determine the number and character of the folds in the material to be guided. The plate A may be strengthened by transverse pieces B B, which are secured to its edges, and lie as close as practicable to the concave side of the plate, just leaving space enough for the cloth to pass between them and the plate A. By inserting a strip of cloth or other material into the guide at the end shown in Fig. 2, and drawing it toward the other end, it will follow the configuration of the surface of the exterior plate A, and will be folded into a shape indicated by the turnings of said guiding-surface. Small projections, provided

space enough for the cloth to pass between them and the plate A.

By inserting a strip of cloth or other material between the bends *a a*, at the end of the guide, shown in Fig. 2, and drawing it towards the other end, the edges are gradually folded down, and the strip folded in the middle till it assumes the form shown in Fig. 3 or Fig. 5, in red outline. The principal difference between the forms of the guides, shown in Figs. 3 and 5, is that the bends *c* and *b'* are made rounder in that shown in Fig. 3, as it is intended for the insertion of a cord *d*, at the edge of the material to which the binding is to be applied, which is shown by blue outline in Figs. 3, 4 and 5, and another cord *e*, in cloth, as it issues from the tube, shall be immediately pressed down and retained by the said foot until the stitches C have been inserted to complete the operation. Any other piece of cloth, D, to which the binding is to be attached, is inserted, as represented, and of course moves along with a motion corresponding with that of A.

The invention as now described would require the spool from which the strip A is received to be located at a distance from the tube B, so as to allow the folds to be commenced in mid-air; but the inequalities in the stiffness of the cloth would throw it into wrong positions and cause it to with holes for the passage of cord, may be arranged, as shown at Fig. 1, F and H, so as to guide a cord or cords under the turned edge or edges of the material.

To apply the binding to the edge of cloth or other material, such edge is placed in such relation to the guide as is shown in the line D in Figs. 1 to 9, and is drawn along at the same time that the binding is drawn along, either by the feed of a sewing machine or other device. The binding is stitched at the proper places for holding the edges and the cord, if a cord is used. The ordinary line of stitching is indicated in Fig. 9 by the line C C.

If the guide is used in combination with a sewing-machine, as

one turn of the binding, and this guide has tubes *g g* attached to conduct the cord *e*, and tubes *h h* to conduct the cord *d*, as shown in Fig. 1. The guide shown in Fig. 5 is simply for folding and turning in both edges of a binding without cording.

To apply the binding to the edge of a piece of cloth or other material, the said edge is placed within the guide, as shown in Figs. 3 and 5, and drawn along at the same time as the binding piece is drawn along. When no cording is inserted in the binding, or only the cord *e*, it is only necessary to stitch it at the point shown by the line *x* in Figs. 4 and 5, but when a cord is required at the edge, and broad assume false folds or become entangled, besides which the operation would bend the cloth throughout and affect its stiffness. I consequently extend the tube in the direction from which the cloth is received and give it the form represented, so that the cloth is supported and guided on all sides while the folds are being produced. The strip is received plain, as shown in Fig. 2, and is gradually *folded along the three lines* B′, B², and B as it moves forward in the tube. It is important to confine the folding entirely to those lines and not to bend the strip at other points so much as to limber its fibers, as any bending of the cloth at other points gives it a tendency to curl will ordinarily be the case, it will be attached to the cloth-plate in such a position as to discharge the folded material under the needle and in the line and direction of the feed.

In Figs. 1, 3, and 6 are shown screws for fastening the guide, there represented, to the cloth-plate. The direction of the screws indicate what will be, in that case, the position of the guide. In Fig. 8 I have shown a section of another form of binder for the same purpose and productive of the same result, but which is of the same sectional form throughout, and is not gradually folded upon itself in converging lines, as described and shown in the case of the first-mentioned guide.

binding is used, stitching will generally be required at the points *x* and *y*, the same as when two cords are used, though if a narrow binding be used and the edges are turned in far enough, one line of stitching will suffice. The guide, when applied to a sewing machine, will stand in the position shown in Figs. 1, 2 and 3, relatively to the horizontal bed of the sewing machine, which is indicated by Figs 1 and 3, by the line *f f*, and will be provided with a plate *i*, through which to insert a screw to attach it to the bed *f f*.

One great advantage of this guide is that it allows strips of raw edged material without a and impairs the perfection of the work.

To construct the tube B in the easiest manner, I take sheet metal of a proper width, and fold over so much of the edge as will make the portion B^2 B^6 on one edge and B^3 B^8 on the other. I next fold the metal again at B′. All these folds must be complete, or nearly so, at that end nearest the needle; but they become less and less sensible, as represented, toward the other end. I then solder strips B^6 B^7 B^8 to the edges B^6 B^8, as represented, and thus complete the tube in effect; but I leave spaces between the strips, as represented. These strips aid in inserting the strip of cloth in commencing to work,

It is manifest from the above description that if the guide be not turned or folded together through the center, or if one of the edges be not folded over, or if the strip of material be not wide enough to receive the the fold on both edges, in the first case the material will be folded only upon each of the edges, and in the last cases it will be folded near the center and upon one edge only.

The great advantage of my guide is that by reason of the folding of the edges it permits the use of raw-edged material without a selvage; another is that it combines cording with binding.

I do not claim guides for folding material through the center only, as those are described in

selvage to be used for binding purposes.

Another is that it enables cords to be put in at the edges of the binding as well as at the fold thereof, which, I believe, can be done by no other guide in use.

I do not claim the single guides as formed by the bends a b *and* a b′ *for turning in the edges of the cloth singly, as those are like the guides of S. P. Chapin, as claimed by him in his patent hereinbefore named.*

But I claim as new and my invention—

The compound guide herein described, composed of the two simple guides *a b* and *a b′* combined and arranged in any way, substantially as herein described, and facilitate the arranging of it in case, from any cause, it becomes deranged or entangled; but they must not be made so large as to deprive the cloth of its proper support.

It is frequently desirable to insert cords in the binding, as represented by E in Fig. 9. I therefore solder eyes or short tubes F F at the points represented to conduct the same; and as it is also sometimes desired to stitch one or more cords within the other edge of the binding, or at intermediate points, I guide in such cord or cords G through eyes H, as represented, and allow it or them to be loosely inclosed in the binding, in order to be secured by stitching at a subsequent operation.

Sweet's patent of 1853, Nichol's patent of 1856, McCurdy's patent of 1856, Singer's patent of 1856, and by others; nor do I claim guides for turning or hemming one edge of a piece of cloth or other material, except when the guide is so shaped as also to simultaneously either fold the material in the center or upon the other edge; but

What I do claim is as follows:

1. *A folding-guide, the guiding-surface of which is turned or folded at each edge, so as simultaneously to fold the material on each edge, substantially as described.*

2. A folding-guide, the guiding-surface of which is turned or folded so as simultaneously to fold

to fold and at the same time turn in the two edges of a strip or piece of cloth or other material.

ALEXANDER DOUGLAS.

Witnesses:
O. D. MUNN.
S. H. WALES.

quent operation. Near that end next the needle one or both the eyes F and H may be dispensed with, and the construction of the tube may also be modified with advantage by adopting near that end the form shown in Fig. 8, in which the cross strips are soldered to the folds B^4 and B^5 instead of the edges B^6 and B^8.

It is essential to the success of my invention that the cloth be supplied to the tube in a condition entirely void of wrinkles, and also free from any strains tending to compress its edges against the tube. I fulfill these conditions by rolling the strip of cloth on a spool and mounting the spool with its center in the line B′, prolonged, and with its

the guided material at or near the center and upon one or both edges, substantially as described.

3. *A folding-guide, the guid-surface of which is gradually turned or folded at each edge so as simultaneously to fold the material on each edge, substantially as described.*

4. A folding-guide, the guiding-surface of which is gradually turned or folded so as simultaneously to fold the material at or near the center and upon one or both edges, substantially as described.

5. *A folding-guide, substantially as described, provided with means, substantially as described, for attaching the same*

axis exactly at right angles thereto.

I do not confine my invention to the sewing of any particular material, but only to such work as requires both edges of the material to be turned under and protected from wear. I do not know or believe that it is practicable to produce bindings similar to mine by any means previously known. *Bindings have been folded along the middle by means analogous to mine; but the edges of the binding were left exposed. Various hemmers have also been invented for folding under the edges of cloth;* but they are not capable of being crowded into so limited a space as is required for *to and combining it with a sewing-machine.*

6. *A folding-guide, substantially such as described, provided with a cord-guide, as and for the purposes set forth.*

ALEX DOUGLAS.

Witnesses:
EDWIN A. BOOTH,
WM. S. PACKER.

this purpose, nor of being constructed so cheaply as mine, besides which they offer more resistance to the passage of the cloth, and bend or fold the same in a manner which impairs its stiffness and gives it a disposition to curl, which renders it impossible to produce so evenly-folded and evenly-sewed work as mine, if, indeed, it is possible, as I doubt, to accomplish the object at all by such means. To enable the work to go on continuously and smoothly, the cloth must be delicately and gently supported on all sides, and carefully preserved from any deranging influences, among the worst of which influences would be severe pulls in any direction, and the curling

and limbering effect produced by being drawn through hemmers.

Having now fully described my binder, what I claim as my invention, and desire to secure by Letters Patent, is—

The peculiar flattened tube B, folded upon itself, as described, so as gradually *to fold the inclosed material along three lines*, and at the same time to support it on all sides and preserve its stiffness at all other points, substantially as described, and for the purposes set forth.

ALEX. DOUGLAS.

Witnesses:
THOMAS D. STETSON,
E. F. LEEDS.

114-104

Office Supreme Court U. S.
FILED
DEC 1 1884
JAMES H. McKENNEY,
CLERK

Supreme Court of U. S.

No. 112. Oct. Term, 1884.

WILLIAM S. THOMPSON et al.

vs.

GEORGE H. WOOSTER.

BRIEF FOR APPELLEE.

FREDERIC H. BETTS,

Counsel.

NEW YORK:
JOHN POLHEMUS, Stationer and Printer, 102 Nassau St.

1884.

Supreme Court,

OF THE UNITED STATES.

WILLIAM S. THOMSON, et al.

vs.

GEORGE H. WOOSTER.

October Term, 1884, No. 112.

Statement.

The complainant and appellee filed his bill against the defendants and appellants on the 7th day of April, 1879, alleging infringement by the reissued patent of Alexander Douglas, No. 5,180, dated December 10, 1872 (p. 2–24).

A preliminary injunction, on affidavits annexed to the bill was, after hearing counsel, ordered by the Court (p. 23, and appeal petition p. 103).

The defendants appeared, generally, by counsel on May 3d, 1879 (p. 27).

No answer was ever filed to the bill, and a rule taking it *pro confesso* for want of an answer, was entered June 10, 1879 (p. 27).

On motion and notice to defendants' counsel a decree was entered for injunction and account, and an order of reference to the Master, August 2, 1879 (p. 28–29).

Hearing was had before the Master upon the accounting from October 14, 1879 to and including November 3, 1879 (p. 30–48).

The Master drafted his proposed report, and copies were made for counsel, November 12, 1880 (p. 66).

On November 18, 1880, the defendant moved before the Master to reopen the proofs. Affidavits were read on both sides upon this motion (p. 66–75).

On December 10, 1880, the Master denied the motion to reopen the proofs on the ground that no surprise or newly discovered evidence, warranting the motion, was shown (p. 75–6).

The Master thereupon filed his report finding that the defendants had made profits by the use of the infringing folding guides in the folding of 1,217,870 yards of goods, to the amount of $6,089.35 (p. 66–7).

On January 10, 1881 (within the thirty days allowed by rule for filing exceptions), defendants filed four exceptions to this report (p. 76–7).

On January 31, 1881 (twenty-one days after the expiration of the time allowed by rule to file exceptions), the defendant filed a further additional exception (p. 77).

On motion and hearing the exception of January 31 was ordered "taken off the files of this Court as "not regularly filed in time required by rules of "Court." (p. 77–8).

On February 11, 1881, the defendant brought on a motion to refer back the case to the Master, for further proofs, and at the same time hearing was had upon those exceptions of the defendants, to the Master's report, remaining on file. Affidavits on the motion to refer back were read on both sides. (p. 78–99).

The Court denied the motion to refer the case back and overruled the exception to the report, and ordered a decree for the profits reported (p. 99).

On April 29, 1881, a final decree was entered for complainant for $6,488.01, profits and costs (p. 101-2).

May 7, 1881, the defendants appealed, reciting the above facts (p. 103).

First Point.

The record contains considerable matter sent up by the appellant, under the prayer of the petition of appeal, which is not a proper part of the record on appeal.

No review can be had of orders of the Court below, which were made by it in the exercise of judicial discretion.

> Rowley *v.* Van Benthuysen, 16 Wend., 369; Preston *v.* Ferrard, 2 Br. Parl., cas. 179; Davis *v.* Bradue, 10 Peters, 286; Indiana R. R. *v.* Liverpool &c., Ins. Co. 109, U. S., 168; McAllinton *v.* Keehan, 96; U. S. 87-90.

Of such nature are the following orders in the record. They are erroneously called for by the petition of appeal, and though necessarily certified here, by the Clerk, under that petition, cannot be properly considered as part of the appeal record.

(*a*) Order granting preliminary injunction (p. 23), and papers on which it was founded (p. 10–23).

(*b*) Order striking out an exception to the Master's report, *because not filed within the time allowed by the rules*, and no excuse appearing (p. 78, fols. 168).

(*c.*) Decision denying motion to remand case to the

Master for further testimony (p. 99).

If any order was entered on the last named decision it does not appear in the record.

Second Point.

The matters adjudged by the interlocutory decree, which was passed on the bill taken PRO CONFESSO, *cannot be reviewed, especially in the absence of any request to the Circuit Court to reconsider or set aside said decree.*

The bill was taken, *pro confesso*, for want of any answer.

This was a distinct and solemn admission on behalf of the defendants, that all the allegations of the bill were true.

In fact, none of such allegations have ever been questioned at any stage of the case.

The validity of the complainant's reissued patent, the fact of infringement, and the allegation that the defendants had made "*great gains and profits*" from such infringement, were all admitted by this act of the defendant.

The decree of August 2nd was founded upon the bill taken *pro confesso*, and was made after full notice to the appellants (p. 27, 28, fol. 54–61), and, following the allegations and prayer of the bill, adjudged that complainant's reissued patent was valid and had been infringed, and directed a reference to compute the profits which were admitted to have been made by the infringement.

No attempt, at any stage of the case, has been made to reopen or set aside the interlocutory decree, nor was the Court, in any way, ever asked to correct it.

None of the matters, therefore, adjudged by the interlocutory decree are open for review.

The 19th Rule *prescribed* by *this* Court for Courts in Equity directs that a decree on bill taken *pro confesso* "shall be deemed absolute, unless the "Court shall, at the same term, set aside "the same, or enlarge the time for filing an "answer, upon cause shown, upon motion and affi- "davit of the defendant. And *no such motion* "*shall be granted* except on payment of costs, &c., "and unless the defendant shall undertake to file "his answer," &c.

No alleged erroneous rulings of the Court below, embodied in its decree, passed, by default, can be considered, unless, perhaps, those plainly apparent on its face.

Kane *v.* Whittick, 8 Wend., 219.
Sands *v.* Hildreth, 12 Johns., 493.
Henry *v.* Cuyler, 17 Johns., 469.
Colden *v.* Knickerbocker, 2 Cowen., 31.
Pacific R. R. *v.* Ketchum, 101 U.S., 285, 295.

Nor will an appeal from a decree founded on bill taken *pro confesso* ordinarily lie.

Murphy *v.* American Life Ins. Co., 25 Wend., 248.
Hait *v.* Strong, 15 Vermont, 377.

Nor, it seems, do exceptions to a Master's report made in pursuance of an interlocutory decree entitle a party, appealing from the final decree, to review the principles settled by the order of reference.

Kane *v.* Whittick, 8 Wend., 219.

Third Point.

No allegation can here be heard against the validity of the complainant's reissued patent.

The bill, taken *pro confesso*, alleges that the original patent "was inoperative by reason of a defective or insufficient specification," and that "the

error arose by inadvertence, accident and mistake," and that the reissued patent was issued "for the same invention" (p. 3, fol. 6).

All this was admitted by the allowance of the bill to be taken *pro confesso*.

The allegation in the bill(p. 3, fol. 5), that in some Courts *verdicts* had been rendered, on the original patent, against infringers, is not an allegation that such original patent was *in fact* valid and operative. And even though this had been alleged, yet the original patent may have been valid or operative in part, and yet sufficiently "inoperative" to require reissue.

Wilson *v.* Coon, 18 Blatch., 586.
Hartshorne *v.* Eagle Co., 18 Fed. Rep., 90.
Giant Co. *v.* Safety Co., 19 Fed. Rep., 509.
Gold & Stock Co. *v.* Wiley, 17 Fed. Rep., 234.

The original patent *was never offered in evidence* at any stage of the case.

The defendants did offer, before the Master, a copy of the "petition, oath and specification, *as* "*originally filed*, of letters patent granted Douglas "Oct. 5, 1858" (p. 46, fol. 90 and p. 63).

It does not appear that *even this* was certified, or, if correct, whether or not this application was afterwards modified prior to the grant of the patent, or whether the patent was finally granted in the form applied for.

No drawing is annexed to the paper produced, nor was any ever offered in evidence, and no witness testifies that the reissued patent is for a different invention.

There is, therefore, no basis of attack upon the complainant's reissue. The original patent must be duly offered in evidence, if comparison between it and the reissue is sought.

Seymour *v.* Osborne, 11 Wall, 516.

If there had been an answer raising the issue of invalidity or non-infringement, and if in support of such answer even a *complete* certified copy of the

file—wrapper and contents of the patent had been offered, thereby showing *all changes* that took place in the Patent Office prior to the original grant, there might be basis for a comparison of the original with the reissue, if the issue was open on proper pleading, but on the present papers there is none.

A similar answer may be made to the contention that no patentable invention was exercised by the patentee.

No such issue is made. The bill alleged the contrary, and the bill is admitted to be true.

No witness for defendant seeks to establish the point.

On the contrary, the evidence of Mr. Wooster, the complainant, is positive and decisive. (Rec. p. 47, fol. 91–93).

In *Dunbar* v. *Myers* (94 U. S., 187, Oct. Term, 1876), this Court held a patent void for lack of patentable invention, but in Myers *v.* Tyson (No. 176, October Term, 1878), this Court affirmed a judgment for $2,000 assessed against a defendant under a decree to which he had "submitted," and overruled his contention that it should inject into the second case, without evidence, its opinion of the invalidity of the patent pronounced in the first.

A Court cannot proceed to found a judgment on evidence without the basis pleadings; nor on pleadings without evidence to support them.

Blandy *v.* Griffith, 3 Fish, 609.

Realizing, as intelligent counsel must do, the force of what is above said, the appellant now seeks to adopt a course of practice as novel as it is extraordinary.

Having utterly failed to present any evidence to the Court below upon which any attack could be based upon the validity of the complainant's patent, they ask this Court to revise the action of that Court, not on the evidence on which *it* acted, but by

producing here, FOR THE FIRST TIME, what they *call* a certified copy of the original patent. Such paper not being contained in the Appeal Book or Record, they print it in a supplement *to their brief*, and gravely proceed to argue from it.

Such practice is so foreign to all propriety as hardly to need comment.

This Court acts on the record made in the Court below, and on nothing else. Matters that are not made apparent by that record are not re-examinable here.

The production and attempt to consider *here*, for the first time, an alleged new piece of evidence, or an alleged new record, without opportunity to the appellee either to deny or explain it, is an anomaly in procedure that we have never seen equaled.

If the purpose of this proceeding is to attempt to prejudice this Court, against the appellee's patent, in advance of the discussion of the rule of recovery, we presume no such effect will be produced.

Fourth Point.

The finding of the Master as to the amount of saving or profit is based upon and strictly follows the evidence before him.

The finding of the Master (confirmed by the Court) is that profits, by way of saving, had been realized by the defendant to the amount of $6,089\frac{35}{100}$ dollars in folding 1,217,870 yards of goods.

This was one-half cent per yard; no unreasonable sum, especially in view of the admission of the allegation of the bill that large profits had been realized.

The defendants were makers of corsets—their business was large. To make the kind of corset, which they did in fact make, it was *necessary* to produce folded strips of cloth. They experimented "not

less than three months" before they settled on the width actually made by the infringing guide. (Rec., p. 33, fol. 70.) They decided upon using, and did, in fact, use the infringing guides.

The basis of the computation was simple.

Prior to the invention of Douglas, and during the period of the accounting, "there was no means "known, used or open to the public to use, for fold- "ing such goods in the same manner, or in "substantially the same manner, other than fold- "ing such strips by the hands of the operator."

(Report, p. 66, fol. 137.)

Naturally, this *hand* work was a slower and comparatively expensive process.

The regular, prevailing and actual cost of such handwork was *at least* three-fourths of one cent per yard, and even then the work was less accurately done; while the cost of the same folding when accomplished by the Douglas guide, was not more than one-fourth cent per yard.

Mr. Wooster testified before the Master as follows (p. 35, fol. 73):

"I had a large experience in the *used* guides "covered by this patent, derived from their use in "the manufacture of fancy goods such as ruffles, "ladies' collars, &c.

"Compared with handwork the advantage is very "great, both as regards nicety of work and saving "of labor. In manufacturing myself I put up "most of my goods in six yard pieces, and I found "that I could, by using one of the forms of folding "guides described in the patent in question, per- "form work for one cent what it would cost five "cents to do by hand; that is to say, we paid one cent "for binding a ruffle six yards long that we would "be obliged to pay five cents for if done by hand— "there being a saving of four cents per piece of six "yards in using the patented folding guide.

"The work done by the defendants as shown on "the corset marked "Exhibit on Accounts," has "one fold, namely, the fold on the center, and con- "sequently required about 25 per cent. less labor "to fold it by hand. I consider three cents per "piece of six yards, or half a cent per yard, would "be a fair estimate of the difference in favor of "work done by the folding guide over handwork. "But in no case can the work be done by hand "with equal nicety, nor I do I think it could be "done by hand to make salable goods compared "with those now offered in the market. The sav- "ing on the number of yards as testified by Mr. "William A. Nettleton as having been made by "the defendants, 1,217,870 yards, would amount to "$6,089.35."

And again he says (p. 39, fol. 79):

"By the use of the patented device a flat strip of "raw edged goods is entered in an inclosed channel- "way, the configuration of the metal forming the "guide, causing the raw edges of the strip to be "folded over on each edge simultaneously, enabling "a person entirely unskilled by its help to fold on "each edge as much goods as can be pulled through "said guide. In order to do this by hand, that is, "without the use of a guide, it is necessary to fold "down first one edge and then the other, consum- "ing much time, making very unsatisfactory, and, "if the hands are not perfectly clean, very dirty "work. And unless much time is consumed, even "after a person has become very expert in folding, "but a small amount of goods can be folded in a "day. *I have tried both ways* and I am satisfied "my estimate is a fair one; and that is not the only "saving. Folding by hand requires from 25 to 33⅓ "per cent. more goods than the guide does, and, if "I add that to my estimate of the saving obtained "by the use of the guide, it will add some hundreds "of dollars to the sum I have before mentioned."

The defendant did not fold by hand, but adapted and used, with full knowledge of the Patent (see allegation of the bill, fol. 8) the Douglas folding guide.

No evidence was ever introduced before the Master that the savings or profits *were not correctly calculated* and *stated* by the complainant.

The rule he followed, and which the Court below followed, in calculating the savings or profits has had the full approval of this Court.

Mowry *v.* Whitney, 14 Wall, 620.
Turrill *v.* Railroads (The Cawood Patent) 94 U. S., 709.
Mers *v.* Conover, 11 O. G., 1111.
Black *v.* Thorne, 111. U. S. 122.

But, *after* the Master had made his draft report, a motion was brought on before him to reopen the case; the grounds of said motion being "surprise" and discovery of "new evidence" in the following particulars:

1st. That the defendant's Solicitor *thought* and "believed it (the estimate of savings) to be too preposterous on its face to require notice," and he *therefore* "*did not put in* any proofs *in reply.*"

2d. That certain experiments had been *then* lately (*i. e.*, *after* Master's Report) made by certain persons which satisfied the defendants that the complainant's evidence of the expense, and speed of folding *by hand* was too large.

The affidavits clearly failed to make any case of "surprise," or show the "discovery" of any new evidence in any legal sense.

(See affidavits before Master, p. 68–75.)

It was simply a case where defendant's counsel erred in judgment as to the force and effect of the evidence which had been introduced, and, when too late, wished to attempt to contradict the positive evidence of what had *actually* been done, and of what had been actually paid for work, by experi-

ments of what *might* be done under the pressure of necessity.

The motion was properly denied by the Master, and his reasons given are unanswerable.

(See Supplementary Report, and opinion, p. 75, fol. 163.)

Of course this ruling is not open to review.

The appellants now contend (Briefs p. 13–15) that the proofs before the Master were insufficient to justify his finding, and that this question can be here considered, *although there is no exception filed*, pointing out the alleged error. (Brief p. 14 top.)

The exception intended to raise this question was an afterthought, was not filed in time, and was stricken out by the Court below.

But if it had been filed in time the argument would be unavailing.

Mr. Wooster's evidence computing the profits, or savings, realized by defendants, by appropriating the patented device, as compared with doing the work, in the only other way open to them, *i. e.*, by hand, is criticised as an "estimate." True Mr. Wooster uses that *word*, but it is evident that what he testified to was, in reality, a mere arithmetical computation.

The Court can go over Mr. Wooster's *facts* and *figures* for itself, and will find its own conclusion harmonious with his.

The fact that Mr. Wooster *calls* his sum in multiplication an "estimate" is unimportant.

"Estimates" are often entirely permissible in evidence as to extent of damage. Indeed, in patent cases they are often *the best evidence*.

What the Courts insist on is, *not* that "estimates" shall not be made, but that the estimates shall be made upon a sound basis, and the facts stated so that the Court can see for itself whether the estimates are "reliable and tangible," or only "speculative and conjectural."

Fifth Point.

The Court properly denied the motion to refer the case back to the Master to enable defendants to take evidence tending to contradict Mr. Wooster's evidence.

On the hearing before the Court upon exceptions to the Master's report, the defendant brought on a motion to send the case back to the Master for further evidence. On such motion numerous affidavits were read which fully corroborated Mr. Wooster's uncontradicted evidence before the Master, and as the defendant has by his petition of appeal brought those affidavits here, it will not be improper to refer to them as showing how fully Mr. Wooster's calculations of savings were sustained, and how entirely correct the Court was in sustaining the report.

Mr. Wooster said (p. 93, fol. 195):

"The operation of folding for the purposes of "trimming or binding materials was greatly facil- "itated by the Douglas guide; whether such guide "was used in connection with the sewing machine, "or whether strips of material were drawn through "such guide by hand, there was a very great saving "effected by the use of the guide as compared with "the folding of similar strips by the hand of the "operator. I had a great deal of practical experi- "ence as to the expense of manufacturing trim- "mings, and I know the saving that was effected "by the use of the Douglas folding guides as com- "pared with folding similar strips of goods by "hand. Prior to obtaining any Douglas folding "guides in my business, I had a great deal of ma- "terial folded by the hands of operators, women "and girls who were skilled in sewing and in using "sewing machines. Strips of material for binding "or trimming were generally cut in pieces of six "yards in length, and prior to the introduction of "the Douglas folder I was always accustomed to

"pay to my operatives for folding bindings, not "then required to be done so neatly as now-a-days, "the sum of five cents on each piece of six yards in "length. * * * * * After the introduction of "the Douglas folding guide, I found that oper- "ators could, with less labor, fold a great many more "strips of material, in the same time than they "could by hand, and the work was done with much "greater regularity and cleanliness. Owing to the "facility for production, however, the price was "reduced, and I paid, and continued to pay for "many years prior to 1873, the sum of one cent for "folding and stitching each piece of material of six "yards in length. The prices that I paid both for "folding by hand, and also for folding by means of "the Douglas binder, were, I believe the ordinary "prices paid by people in similar business at the "time * * * * *" (p. 94, fol. 197). And again "in making my statement of the saving effected by "the defendants by the use of their guides which "infringed upon the Douglas patent, I excluded "any saving effected by them by the use of the "mechanism of the drawing and pressing mechan- "ism which was used by them. In order to calcu- "late their saving I made the comparison simply "between what they would have had to have paid "*if they had had their strips folded by hand, ac-* "*cording to the usual former practice of the trade,* "and what they would have had to have paid for "folding such strips by the aid of Douglass guides, "as I had ascertained such facts *by my own prac-* "*tical experience.*"

Henry S. Brown, a large manufacturer, deposes as follows (p. 95, fol. 199): "I am thoroughly con- "versant with the subject of folding strips of muslin "and like material, both by hand and by the use of "folding guides. I have had strips of raw edged ma- 'terial folded by hand, and also by Douglas fold- ing guides in large quantities. The saving by "use of the folding guide is very great. Strips of

"raw edged material can be folded by the use of "folding guides, which consist of an inclosed chan- "nel-way just turned at the edges, so as to fold the "material at each edge, for about the sum of "twenty-five cents for 144 yards; a profit can be "made at that price. Goods folded in the same "way by hand with anything like nicety cost at "least one cent per yard."

F. A. Kursheedt, president of the Kursheedt Mfg. Co., manufacturers of folded goods, testifies (p. 96, fol. 200):

"I am familiar with the Douglas device or fold- "ing guide, which consists of an inclosed channel- "way for material just turned at the edges so as to "fold the material at each edge at the same time, "and also with the operation of hand folding. "From my past experience I am able to state that "a difference of one-half a cent per yard between "hand or finger folding, and that done by the "folding guide before mentioned, is a very low es- "timate. I should not be willing to contract to "make by hand at double that amount or rate and "agree to have it at all compare in nicety of finish "to the folding done by the Douglas folding guide."

Thomas J. Check, of Cummings & Check, manufacturers of furnishing goods, testified (p. 97, fol. 203):

"In our business we employ hands to fold strips "of raw-edged material on two lines or edges, and "pay for such folding 12 to 15 cents per dozen "pieces by hand without aid of machinery, said "pieces averaging from 30 to 38 inches each, or about "one cent to $1\frac{1}{4}$ cents per yard, and that is as low "as we can hire it done where any degree of regu- "larity in the folding is required."

The affidavit of Andrew Comstock, who learned the market prices of hand-folding, as paid by a number of establishments, fully corroborated this statement (p. 98, p. 204, 205).

As opposed to this evidence of what was *actua done* and *paid, in practice*, for similar work to de-

fendants, how weak and insufficient are the affidavits presented by defendants and appellants relating to interested experiments, made *subsequent to judgment* by the Master.

Sixth Point.

The exceptions filed to the report are not well taken.

Four, and only four, exceptions were regularly filed to the report (p. 76, fol. 165–7).

The fifth exception was filed out of time and ordered "off the file" (p. 77, fol. 168).

These four exceptions will be considered in order.

The FIRST EXCEPTION urges as error, to the finding of the Master, that he failed to find that during the period of infringement strips could have been folded "by means of a single guide or older."

This exception seems to be bound to the following state of facts:

Prior to the termination of infringement it is admitted that no means had been *used* by the defendant for folding strips other than the infringing guides, and no other means seem to have been *known* to them except, of course, hand folding.

After the injunction was served and *after* infringement ceased, the defendants apparently *invented* another method of accomplishing the result, or else sought to fold by using mechanism which infringed *another* patent of Mr. Wooster's.

Close, the superintendent of the defendants' strip department, testified as to this newly devised method. He says (p. 44, fol. 86):

"I remember injunction in this case being served; "had no strips folded out of the factory by people

"after the injunction was served; we used some "machines with single edge folder; a boy then "passed it through another single edge folder and "folded the other edge; the strip did not run "from one folder into the other, it was taken off; "was run through with a reel in the other folder "a'so; we had this second folder specially con- "structed for us; I don't remember who made it; "it was not made in the factory; the tongue of the "folder was high enough to admit the folded edge; "we ran different thicknesses through it; it would "admit a thick strip or a thin one; I never ex- "amined it; I was in the strip department; had "charge of it; never examined it as regards that "spring; *I can't tell on what principle it oper- "ated.*"

The witness subsequently (fol. 86) identified a specimen *of one* of the single edge folders; but the peculiar one whose principle he did not understand does not seem to have been introduced.

This was *all of the evidence* introduced by the defendant, before the master, tending to show that there was any other mode than hand folding that could have been adopted to accomplish the result in question, and, as to this method, it appears to have come into existence solely *after the period* of infringement.

It also appears that this machine, if it had been used or known of during the period of infringement, would have been an infringement upon another patent of Mr. Wooster--reissue 6,308.

The defendants contended before the Master, and before the Court below, that the complainant was only entitled to recover, in savings or profits, the difference in the cost between the use of the infringing guide, and what it would have cost to use two so-called "single" guides on separate machines (such as they invented after they were enjoined under

the Douglas patent) for folding each edge successively, although such use of single guides was never even *attempted* by the defendants until after an injunction in the present case; and although such use would have been an infringement upon *another patent* of Mr. Wooster's.

In other words, they appear to say: "We have "made little or no profit by infringing the Douglas "Patent, because we might have made nearly as "much profit by infringing another patent of yours, "or by adopting a method of work which we never "knew of until we had made our profit by stealing "your invention."

Such rule of comparison is not a sound one, nor does it accord with the repeated expressions of opinion of this Court.

The finding of the Master followed, with hardly a verbal change, the careful direction of this Court, in *Mowry* v. *Whitney* (14 Wallace, 651), where it was said: "The question to be determined in this "case is, what advantage did the defendant derive "from using the complainants' invention over what "he had in using other processes *then open to the* "*public*, and adequate to enable him to obtain an "equally beneficial result."

In *Black* v. *Thorne*, 111 U. S. 122 the proper subjects of comparison in estimating savings were stated to be "other methods *in common use*" or, other "methods they had *a right to use.*"

Processes which were protected by *other patents* or were *not in existence* at the time of infringement, were not, of course, *then* "open to the public," and are clearly not proper subjects of comparison.

In *Turril* v. *Railroad* (3 Bissell, p. 72), the Court said: "In ascertaining the profits, the comparison "must be between the old and the new method. "The defendant will not be permitted to show that "he could have pursued a more profitable course."

In *Knox* v. *Mining Co.* (6 Sawyer, 436), the Court said: "In determining the amount of profits the "comparison must be made with machines which "at the time of infringement were *known* and *open*

"*to public use*, and not with machines that have "been invented since."

The defendant is held for the savings made by using the Douglas guide, as compared with what he would have made by pursuing the only other course open to him, *i. e.*, do the work by hand. Can it be said that he did not actually make that saving because he might have made one half as much, or two thirds as much saving, by using another machine which it was *not open to him to use*.

When a defendant has profited by committing a trespass on one piece of property, can he be heard to diminish the recovery against him by alleging that he could have profited to an equal or partial extent by committing another trespass?

If one appropriates the property of another, and is held to compensation, does it go in mitigation of damages that he could have, on the same occasion, but did not, appropriate another, but less valuable, property?

As was said by the Court in a similar patent case, where savings had been reported, as profits (*Herring v. Gage*, 15 Blatch, 124-9), "It would be a novel "defense to permit a trustee, who has made a profit "by the use of the money or property of his *cestui* "*que trust*, to show that he would have made an "equal profit if he had used the money or property "of a third person, or if he had used his own money "or property. It was quite unnecessary, in my "judgment, to enter into an investigation of the "savings which the defendants might have realized "if they had used some other than the complain-"ants' device, and the exception to the Master's "finding upon the question cannot avail the defend-"ants."

(See also Burdett *v.* Estey, 19, Blatch, 1.)

So, also, in *Elizabeth* v. *Pavement Co.*, 97 U.S.126, when the defendant attempted to show that he could have realized a portion or all of the decreed profits by using other modes of constructing pavements than that adjudged to be an infringement.

This Court said :

"We have no hesitation in holding that under "the reference the evidence was incompetent. It "was offered by the defendant to show that there "were other forms of wooden pavements open to "the public, which they might have used and made "the profits, or some portion of the profits, which "had been realized by the use of the complainant's "invention.

"It is a sufficient reply to such offer to observe "that the complainants preferred and used the com- "plainants' property, and made their gains there- "from; and that these gains no less belong to the "complainants, because they might have realized "other gains by the use of lawful methods."

Is not the attempted comparison in the present case all the more incompetent, in view of the fact that the proposed comparison is with a method in itself unlawful ?

The Court will not, of course, be mislead into supposing that any such work as the defendants did could have been done by a simple, ordinary sewing machine "hemmer," or hemming attachment, or by a guide such as was described in the Chapin Patent of 1856 (p. 58-63), or by a binder such as shown in the McCurdy Patent of 1856 (p. 55-57).

The ordinary "hemming" guide merely folds over, to be stitched, one edge of a piece of a cloth, generally a large piece, such as a portion of a garment.

It does not control the other edge of piece to be folded in any way, and could not be used merely to fold edges, without almost as much manipulation as to fold by hand. To attempt to fold opposite edges of a narrow strip of goods by any such contrivances by successive operations, and without *other*, *unknown* and unsuggested, appliances, would be about as foolish an expenditure of patience as can be imagined.

The "Chapin hemmer" was a very complicated form of such a hemmer (see drawing opposite p. 63), which it is difficult to understand.

The McCurdy binder was a guide for folding a strip in the center only.

By no possible manipulation or duplication of it could the result achieved by the Douglas guide be accomplished.

The Douglas folding guide, patented in the patent in suit, for the first time furnished to manufacturers an inclosed channel way for narrow strips of material, which automatically controlled both edges of a strip which fitted it; folded over both edges simultaneously, and enabled the *most unskilled* operator to fold the edges of strips as fast as the strips could be pulled through the guide by hand.

The device was simple, but its very simplicity was an element of value.

It was produced in the early days of the sewing machine industry, and has been, ever since, an important auxiliary in all manufactories where folded strips are to be produced for subsequent stitching, or otherwise.

There was absolutely no manipulation, or skill, and but little care and attention required for its use. This was fully explained by Mr. Wooster, and his evidence was absolutely uncontradicted (p. 47, fol. 91, and p. 48, fol. 93).

Possibly the result *might* have been accomplished by some combination or arrangement (as yet unsuggested) of the complicated and little understood "Chapin hemmer."

Douglas seems to have *thought so* when he *first* filed his application for a patent.

As matter of *fact*, it is difficult to see how any such thing could have been *practically* accomplished.

Douglas' guide might, by some, have been regarded as, in a certain general, indefinite sense, a combination of two Chapin hemmers, but, if so, it was under modified forms, and under circum-

stances in which the *so-called* hemmers co-operated to produce *an entirely new result*. And as Mr. Wooster said, the Douglas folding guide is, in fact, "something a great deal more than two Chapin hemmers could possibly be" (p. 48, fol. 92).

"It contains, in addition to a device for turning "an edge, an inclosed channel way, which supports "and embraces the whole width of the goods, in- "stead of merely an edge thereof, and enables a "person to fold, with mathematical precision, a "strip of goods in precisely the same width and "form throughout its whole length" (*id.*, fol. 93).

The defendants did *not* use a "*hemmer*" in any form, nor a "Chapin guide," nor a "McCurdy" guide (Wooster, p. 47, fol. 92).

Until they were stopped by injunction they used a Douglas guide, and drew the goods through such guide by a pair of rolls.

If the rolls pulled the goods through more quickly than they would have been pulled by hand (which is unstated), that fact is unimportant, for no increased speed in the operation due to using the rolls is charged against the defendants in the computation of savings (Wooster, p. 97, bottom, fol. 197–198).

After the injunction the defendants succeeded in accomplishing the desired result (which, unless done by hand, could have been only, otherwise, accomplished by the use of the Douglas guide) by inventing (p. 44, fol. 86) the machine which, as far as understood, is shown in section in the lowermost figure of the drawing opposite page 99.

If this machine was an infringement of Mr. Wooster's Robjohn Patent (as Mr. Wooster believes, p. 94, fol. 196–7), then comparision of its efficiency with Douglas' guide is "incompetent."

If it was not such an infringement, because then newly *invented*, comparison is equally "incompetent."

The Court will, of course, observe that no part of the profit or saving attributed to appropriating the

Douglas invention was in any sense attributable to the possible fact that the defendant's machine also infringed the Robjohn Patent.

The value of the Douglas invention and patent lay in the economy with which the narrow strips could be automatically folded by being simply drawn through the guide by hand, instead of folded by hand.

It is the saving due to this element of value which is alone charged to defendant.

The Robjohn invention was different from, or *supplemented* Douglas'. It consisted of combining a pair of drawing and pressing rolls with an inclosed channel way guide, whether Douglas' or not.

The value of Robjohn's invention consisted in the flattening out to a sharp edge the folds in the strips; and perhaps (though this is not shown) in greater speed in drawing the goods through the guide.

Whatever this advantage may have been is unimportant; no profit, flowing from it, is charged against defendants in this suit.

The SECOND EXCEPTION contends that the Master's report was erroneous, because it appeared that folding strips, such as used by the defendant, were an article of merchandise, and could have been purchased by them of a man by the name of Bruce, at Clinton, Mass.

It does not appear how Bruce made these folding strips. If he made them at any such price as is contended, the evidence is uniform that he could not have made them by hand; he must have made them by infringing the complainants' patent.

Can it be reasonably contended that defendant had made no saving or profit from the use of an infringing contrivance, because he could have bought the goods in question, *when made by another infringer* at the same price?

And if he claims that he has made no profit because he could have procured the goods in question equally cheaply, as he made them himself, by infringing, is it not *incumbent upon him*, if he intends

to institute any comparison with the price of the goods which he could so procure, to show that such goods were *lawfully* made?

The mere statement of these propositions seems to carry with them the proper answer, and show that the Master's conclusions, and those of the Court below, were entirely correct.

Under this branch of the case the defendants seem to contend that the practice, which they followed, of *folding* these strips *themselves*, instead of *buying* them, was a commercial mistake and that they might have followed a better mode of doing business.

Such an argument is inadmissible.

The defendants undertook to infringe and thereby fold the strips *themselves*, and must be held to the saving made by them in so doing.

Turril *v.* R. R. Co's., 94 U. S., 709.

The THIRD EXCEPTION covers the same ground as the first and need not be further considered.

The FOURTH EXCEPTION relates to the question of amount of damages assessed, and as the decree only adjudged the complainant entitled to the profits, the exception is of no importance.

If damages should be a proper subject of consideration, the propriety of the Master's assessment will be supported by reference to *Wooster* v. *Taylor*, 14 Blach., 403.

The FIFTH EXCEPTION (p. 77, fol. 167) was, as already noted, stricken out of the motion. It was not filed in time.

But even if it could be considered it would be unavailing. It alleges error only in the fact that the Master believed the evidence of Mr. Wooster, as to the amount of saving, to be true, when *there was no other evidence* on the subject whatever.

As already seen, Mr. Wooster's evidence is clear

and conclusive and abundantly corroborated by the affidavits of others.

Sixth Point.

It is respectfully submitted that the decree should be affirmed.

FREDERIC H. BETTS,
Counsel for Appellee.

14-104-H

U. S. Supreme Court,

No. 112. Oct. Term, 1884.

THOMSON *et al.* *vs.* WOOSTER. } APPEAL FROM U. S. CIRCUIT COURT, SOUTH'N DISTRICT OF NEW YORK.

BRIEF FOR APPELLANTS

J. C. CLAYTON,
A. Q. KEASBEY,
of Counsel.

Nov. 12, 1884.

NEW YORK:
JOHN POLHEMUS, Printer and Stationer, 102 Nassau Street.
1884.

U. S. Supreme Court.

OCTOBER TERM, 1884—NO. 112.

WILLIAM S. THOMSON, CHARLES H. LANGDON, GEORGE C. BACHELLER and ALVIN E. HEWITT, trading as Thomp[illegible] Langdon & Company, Appellants,

vs.

GEORGE H. WOOSTER, Appellee.

Appeal from the Circuit Court of the United States for the Southern District of New York.

BRIEF FOR APPELLANTS.

Statement of the Case.

This is an action for an injunction and account for alleged infringmement of Letters Patent.

The Patent was originally granted October 5th, 1858, to Alexander Douglas for alleged improvements in folding guides. The said patent was extended for seven years on the 5th day of October, 1872; thereupon said patent was assigned to the complainant Wooster. The original patent had but one claim; said extended patent was reissued with six claims on December 10th, 1872—fourteen years, two months and five days after the grant of the original patent.

This suit was brought in March, 1879, twenty years and five months after the grant of the original patent. The bill averred that prior to the extension

the novelty of the invention and the validity of the original Letters Patent had been sustained in numerous suits in the Circuit Courts of the United States, in which all of the defendants in said suits submitted and took licenses and paid therefor (see Rec. Vol. 5). Prior to beginning this suit, complainant offered to settle at his ususal rates of license, but was unable to agree with defendants as to the sum to be paid (Rec. fol. 80).

The defendants, in consequence of the complainant's averment that the validity of the patent had been frequently sustained in many litigations and that many prominent firms had submitted, did not, in this suit, in the Court below, file any answer or make any other defense except as to the question of the amount to be paid.

[The motion for preliminary injunction was resisted, but the grounds of that resistance are not presented in this record.]

Accordingly, complainant obtained by default on the 2d of August, 1879 an interlocutory decree sustaining the patent and ordering an injunction and account.

An accounting was held before the Master, whose report was filed December 10, 1880.

The defendants, after reading the Draft Report, applied to the Master for leave to make further proofs, which motion was denied (see fol. 163-4). The defendants in due season filed four exceptions to the Master's Report. The exceptions to the Master's Report and the motion to refer back to the Master for further proofs were argued together.

Circuit Judge Blatchford denied the motion to refer back, overruled the exceptions to the report and ordered a decree for the complainant for the profits reported, but not for the damages. Final decree in accordance with Judge Blatchford's opinion was filed May 5th, 1881, decreeing that the complainant recover as profits and the sum of $6,089.35, with interest and costs amounting in all to the sum of $6,488.01. The defendant's appeal was allowed

May 7, 1881. A bond was duly filed, and citation was duly issued and served on the 7th of May, 1881. The appellants appeal (fol. 222) from the whole of said decree, and pray that "the said decree and "the pleadings, proofs and each and all of the deposi- "tions, motion papers, affidavits, decrees and all "proceedings in this cause, may be sent to the Su- "preme Court of the United States without delay, and "that the said Supreme Court will proceed to hear "the said cause anew, and that the said decrees of "the Circuit Court, and every part thereof, may be "reversed and a decree be made dismissing said bill "with costs, or such other decree as to said Su- "preme Court shall seem just."

The entire case as presented in the Circuit Court is now here upon all the defenses made in the Circuit Court, and also upon such other defense as may be considered in this Court.

Reasons of Appeal.

1st. For that the Court below erred in overruling the first exception to the Master's Report.

2d. For that the Court below erred in overruling the second exception to the Master's Report.

3d. For that the Court below erred in overruling the third exception to the Master's Report.

4th. For that the Court below erred in overruling the fourth exception to the Master's Report.

5th. For that the Court erred in refusing to allow the first exception to the Master's Report.

6th. For that the Court erred in refusing to allow the second exception to the Master's Report.

7th. For that the Court erred in refusing to allow the third exception to the Master's Report.

8th. For that the Court erred in refusing to allow the fourth exception to the Master's Report.

9th. For that the Court erred in decreeing any profits to the complainant, because the evidence in the case was insufficient to sustain profits, as found and reported, or any profits. Whereas, the Court should have decreed that the complainant had failed to prove any profits made by defendant from the alleged infringment.

10th. For that, on the face of the Bill and the patent, the reissued patent in suit was illegally granted, and therefore void, and the Court should have so held ; and this Court is now asked to so hold, because the bill avers that during the fourteen years of the original term of the patent the validity of said Letters Patent was established in numerous suits in the Circuit Courts of the United States, and that all persons sued took licenses and paid therefor, as well as many others, not sued. Thereby averring, in substance, that the original Letters Patent were *valid* and *operative :*

Wherefore, appellants ask this Court to hold that the original Letters Patent having been *valid* and *operative*, as averred by complainant, for over fourteen years, no reissue thereafter could be legally obtained, because *invalidity* or *inoperativeness* are conditions precedent to the grant of a reissue.

11th. For that the Court erred in holding the reissue to be valid, whereas (upon the face of the reissue, showing that it was granted fourteen years and two months after the original grant, and two months after the grant of the extension), the Court should have held that the reissue was *void by reason of unreasonable delay* and gross *laches* inapplying therefor. And this Court is now asked, in conformity with the rule of law laid down in the case of Miller *vs.* Brass Company (announced since the allowance of this appeal) to hold said reissued patent void, *and* to dismiss this bill.

12th. For that the Court erred in holding said re-

issue valid, because the said reissue was granted for other and different inventions from that described in the original application of the patentee, said original application having been filed with the bill herein, and having been also offered in evidence on the accounting. Whereas the Court should have held, and this Court is now asked to hold, that said reissue Letters Patent were void for the reason last above stated.

13th. For that the Court erred in holding that the reissued Letters Patent were valid. Whereas the Court should have held, and this Court is now asked to hold, that said reissue was void, because the specification of said reissue was unlawfully expanded after unreasonable delay, as will appear by comparison of the original patent with said reissue; and this Court is asked (in view of the fact that the reissued patent on its face expressly refers to the original Letters Patent, No. 21,659, dated October 5, 1858, and the further fact that complainant had full knowledge of said original Letters Patent and its contents, and the fact that all letters patent are open and accessible to the public) to permit appellants to present to the Court, for examination and comparison, a certified copy of said original Letters Patent.

[It is printed at the end of this brief.]

14th. For that the Court erred in holding said reissue valid, because the original patentee, in his original application as originally filed, stated that his guide was formed by combining and arranging two single guides like the guide previously patented to S. P. Chapin, which was a *mere duplication*, not involving invention or patentability. Whereas, the Court should have held, and this Court is now asked to hold, that the assignee of the original inventor, by reason of the said statement, is estopped to deny that the invention was a mere duplication, and that the said invention, being a mere duplication, lacked patentability, and that Letters Patent granted therefor were void.

Argument.

It will be convenient to last consider the questions arising on the accounting, for, if the reasons touching the invalidity of the reasons shall appear sound, the Court will be relieved from the consideration of the accounting.

AS TO 10TH ~~AND 11TH~~ to 14th "REASONS."

Numerous defenses have been entertained in this Court either *sua sponte*, or upon argument here, although not made in the Court below, or not contained in the pleadings.

One such defense is that of non-jurisdiction; this is considerable by any appellate Court, although neither raised by the pleadings nor by argument in the Court below.

So, also, the defense of *lack of invention* or *non-patentability* has been considered in this Court, although not raised in the Court below, either by pleadings or argument.

Brown *v.* Piper, 91 U. S., p. 37.
Slausson *v.* R.R. Co., 107 U. S., p. 649.

The principle upon which those cases were based was that where *non-patentability* (a defense striking at the vitals of the case) was apparent, either on the record, or within the judicial knowledge of the Court, it would be considered even *sua sponte*, although not raised by the pleading or arguments below.

In this case, the exceptional and grossly unreasonable delay and *laches* for more than fourteen years is apparent on the face of the bill; so also, upon the face of the bill, it is apparent that, on many occasions, the original patent was held to be valid and operative by the Circuit Courts, and it is equally apparent, as matter of law, needing no argument, that *invalidity* or *inoperativeness*, one or both, is a con-

dition precedent, by the very terms of the statutes, to the grant of the reissue.

It may be objected that no defences to invalidity should not be considered, because no such issue was tendered below. But the decree was a mere decree by default, or as *pro confesso*. It was not a *consent*-decree. But it was held in Penn. R.R. Co. *v.* Ketcham, 107 U. S., 289, that even a consent-decree could be appealed from.

In the case of Stacum *v.* Pomery (6 Cranch. 221), Chief Justice Marshall held—"There can be no doubt that anything appearing upon the record, which would have been fatal upon a motion in arrest of judgment, is equally fatal upon a writ of error."

It cannot be doubted that all the defenses herein named touching the validity of the reissue are apparent on the face of the record, and might have been demurred to, or have been urged on a motion in arrest of judgment, upon the settlement of final decree.

It was also held by the present Chief Justice in McAllister *v.* Kuhn, 96 U.S. 87, in a *default case:*

"Upon a writ of error to reverse a judgment *by* "*default*, such defects in the declaration or com- "plaint as could have been taken advantage before "judgment by general demurrer, may be brought "under review. If the judgment would have been "arrested on motion, if made, because the declara- "tion did not state facts sufficient to constitute a "cause of action, it may be reversed for the same "reason upon error."

the centre so as to form a binding to embrace the edges of a garment. This was a bending of a strip of cloth on *three* lines—one line being at each edge and one line being in the centre.

And the claim in said original application was expressly for a guide of that character, and there is

nothing whatever said in this original application tending to show that the patentee ever thought of so modifying his guide as to turn or *fold* on two edges only. His sole idea, as originally described, was a guide adapted to make binding by turning in the edges and also folding at the middle, thus producing a binding adapted to embrace the edges of garments. The guide originally described was not capable of use for merely turning in two edges of a strip; by reason of its construction it was obliged not only to *turn in* the two edges, but to fold the strip itself down the middle over the garment or article to be bound.

The defendants (and this will be conceded) *never used such a guide.* The only guide used by the defendants was a guide which turned in or hemmed the two edges only, and did not fold the strip down the centre; and these strips were not used to embrace or bind the edges of anything; they were merely laid flat upon and sewed to corsets to form pockets for the insertion of bones.

The original patentee, although he varied his original patent from his original application, expressly recognized this view of the original application. For in the original patent, No. 21,659, he expressly describes his guide as adapted to fold the cloth along three lines, and his claim is for a guide "to fold the enclosed material along *three* lines." So that in respect to the thing described and claimed the original application and original patent agree. In the reissue (granted more than fourteen years after the original patent and more than sixteen years after the filing of the original application), and granted to the assignee of the original patentee, the nature, form and character of the thing invented is very materially changed and six claims instead of one are made.

The claim made in the original application and also in the original patent is discarded in the reissue, unless by liberal construction the second and fourth claims may be held to include the subject

matter of the original claim. It is not claimed in this case that defendants infringe the second, fourth, fifth or sixth claims. It is claimed that they infringe the first and third claims; the first and third claims are identical except that the word "gradually" is inserted in the third claim. For the purposes of this case we may consider the third claim to be the same as the first claim, which is as follows:

"1. A folding guide the guiding surface of which "is turned or folded at each edge, so as simulta- "neously to fold the material on each edge, sub- "stantially as described."

Defendants have used several guides such as are described in the claim. *But no such guide was ever described or claimed in the original application.* If this be so, it is manifest that the reissued patent covers another and different invention from that described in the original application, and is therefore *void;* at any rate *as* to so much thereof as relates to the first and third claims, which are the only claims involved in this clause. The 12th Reason should therefore be sustained.

AS TO 13TH REASON.

The reissue is invalid, because it is *unlawfully expanded after unreasonable delay*, more than fourteen years having elapsed between the grant of the original patent and the filing of the reissue ap-

Reissue invalid for unreasonable delay—see

Miller *v.* Brass Co., 104 U.S., 350.
James *v.* Campbell, *id.* 356.
Bantz *v.* Frantz, 105 U.S., 160.
Turner & Seymour Mfg. Co. *v.* Dover Stamping Co., 111 U.S., 319.

All of these cases were decided after the appeal in this cause. They established a new rule of law, requiring reasonable *diligence*, and clearly show that complainant's reissue granted 14 years and 2 months after date of original patent is void as to these defendants.

its face refers to the original patent by its number and date; because said original patent was a matter of public record easily accessible to the complainant and the rest of the public; and because the complainant and his counsel have long had full knowledge of said original patent and its contents, and cannot in any way be surprised by a disclosure or a consideration of its contents; and because copies of this brief have been delivered to the counsel of appellees several days before this hearing.

Every patent is construed by the light of every previous patent, and every patentee is deemed to know the contents of every prior patent relating to the subject matter of his invention.

A fortiori is every grantee of a re-issue held to know the contents of his original patent.

And, in construing a reissue, the Court should take, *sua sponte*, judicial knowledge of the original patent which is the foundation of the reissue, and which is referred to by number and date on the face of the reissue.

The original patent and the reissue are both public grants, under the seal of the Department of the Interior which the Court can examine *sua spontes*, by procuring a copy for itself.

By statute a certified copy is proof of the contents of the grant, and that proof is here tendered.

Indeed, by legal intendment this Court already knows the contents of the original patent, and its production and examination serve chiefly to refresh the Court as to its contents.

Under these circumstances, this Court should take judicial knowledge of the original patent.

As to 14th Reason.

Said reissue is invalid because the *thing patented* lacked invention or patentability, being *a mere duplication* of two single guides like that described in the prior patent of S. P. Chapin. The patentee Douglas stated in his original *application* "That this guide is formed by combining and arranging

as hereinafter described, two guides, such as are described and claimed in the patent of S. P. Chapin, Feb. 19, 1856."

Also, "I do not claim the single guides as "formed by the bends *a b* and *a b* 1 for turning in "the edge of the cloth singly, as those are like the "guides of S. P. Chapin, as claimed by him in his "patent hereinbefore named. But I claim as new "and my invention, the compound guide herein "described, composed of the two simple [single?] "guides *a b* and *a b'*, combined and arranged in "any way substantially as herein described, to "*fold and at the same time turn in the two edges* "of a strip or piece of cloth or other material."

It is submitted that these declarations of the original patentee estop the complainant from averring, as he has sought to do in his testimony (folios 92–93), that the Douglas guide was not a mere duplication of the Chapin guide.

In the well known sawing machine case (Dunbar *vs* Myers, 94 U. S., 187) it was held that where one deflecting plate had been used in combination with a saw to open the kerf, it was not a patentable invention to use two deflecting plates in combination with a saw for the same purpose.

It is submitted that this case of Dunbar *vs.* Myers sustains this 14th Reason of Appeal.

As to the 10th Reason of Appeal.

Under this "Reason,', the Court is asked to declare the reissue invalid, because the bill expressly avers that during the original term the original patentees brought numerous suits in the Circuit Courts in which the validity of the original Letters Patent were sustained, and that many licenses were granted and paid for. It is here contended that the bill substantially avers that the original patent was *valid* and *operative*. The averment is as follows (Rec. fol. 5.):

"That thereupon after the issuing of the said "Letters Patent, as aforesaid, the said Douglas put

"the said invention into use, the same was largely "used in his business, and *he granted licenses to* "*many persons*, to use the said invention under "said Letters Patent, upon payment of certain sum "provided to be paid by them, and he also brought "numerous suits at law in the Circuit Courts of the "United States, founded on said Letters Patent, in "all of which the defendants submitted and took "licenses under said Letters Patent, paying there- "for, or verdicts were rendered against them *sus-* "*taining* the novelty of said invention and the *va-* "*lidity* of said Letters Patent."

The statutes providing for the grant of a reissue expressly prescribe "*invalidity*" or "*inoperativeness*" as conditions precedent to the grant of a reissue. The language of the statute is as follows: "That whenever any patent is *inoperative* or *invalid*, by reason, &c., the Commissioner shall, &c., cause a new patent for the same invention, &c., to be issued," &c. Rev. Stat., §4916.

The averment unquestionably asserts that numerous Circuit Courts sustain the validity of the patent. There may be some slight room for argument that it does not clearly aver "operativeness," but unquestionably the averment quoted clearly shows that it was operative to a great extent, for many persons took licenses before suit, as well as many who took licenses *after* suit. It certainly was *operative* according to the quoted averment, to the full extent of the single claim; in the original patent it was not operative (and ought not to have been) to the extent of including the different inventions and forms covered by the expanded and additional new claims of the reissue. Claims 2, 4, 5 and 6 of the reissue are the only claims in the reissue which, by even the most liberal construction, may be deduced from the original application as the original patent; but it is not contended that the defendants in any wise infringe any of these four claims. *The only claims upon which in-*

fringement is charged are claims 1 and 3; these claims or their subject matter are in no way referred to, either in the original application or the original patent; *they are strictly new matter*, so that it would appear that the Court cannot avoid holding that the original patent was *valid* and *operative to the full extent* of the subject matter therein described and claimed, and to the full extent of the original patentee's right; and that both conditions precedent, to wit, "*validity*" and "*operativeness*" were lacking, and therefore the reissue is invalid.

[See an able discussion on this point of law and cases, cited in Walker on Patents. Sec. 221–224].

This court has never directly decided this important question, although several *obiter dicta* have been uttered on both sides.

The following cases sustain the view here urged:

Whitely *v.* Swayne, 4 Fish., 123.

Wicks *v.* Stevens, 2 Bann. & Ard., 318.

Giant Powder Co. *v.* Vigont Powder Co., 6 Sawyer, 508.

This last case was decided by Mr. Justice Field, and appears to be directly in point. So also see

Flower *v.* Rayner, 5 Fed. Rep., 793.

Searle *v.* Bouton, 12 Fed. Rep., 626.

It seems, however, to need no argument, because the statute which authorizes the Commissioner to grant a reissue, at the same time prescribes the *conditions--precedent* of *invalidity* or *inoperativeness;* unless one of these conditions exist, he has no jurisdiction; and the statutes not only do not make him the final judge of his own jurisdiction, but expressly provide for an appeal from his decision if he should refuse a reissue.

AS TO REASON 9.

Under this reason it is contended that the proofs before the Master were insufficient to warrant the

finding of the profits found and reported, or of any profits.

This is in the nature of a general exception, and is considerable upon the evidence, without *formal exception.*

It is a claim that the weight of evidence was insufficient to base the finding of profits.

Authorities.

AS TO REASONS 1 to 10, RELATING TO THE ACCOUNTING.

The article made and used by the defendants, and in the making of which the infringement is charged, are strips of cloth folded on each edge, and which are sewed upon corsets to form the bone pockets.

These strips were turned in and two edges only, and were not folded in the centre—were not folded in three lines—as described in original application and original patent.

These strips, during the time of the charged infringement, were made by a folder, or guide, which turned in both edges simultaneously.

The quantity of such strips made by the defendants was 1,217,870 yards.

Rec., fol. 68.

The evidence offered on the part of the complainant—the complainant himself being the witness—as to the *profits* made or saved by the defendants, has reference to the saving, arising from the use of the double folder, in folding the strips, as compared with folding them by hand, and is as follows:

> " I had a large experience in the used guides
> " covered by this patent, *derived from their use*
> " *in the manufacture of fancy goods, such as*
> " *ruffles, ladies' collars, etc.*"

> " Compared with hand work, the advantage
> " is very great, both as regards nicety of work

"and saving of labor; in manufacturing, my-
"self, I put up most of my goods in six-yard
"pieces, and I found that I could, by using one
"of the forms of folding guides described in
"the patent in question, perform work for one
"cent that it would cost five cents to do by
"hand; that is to say, we paid one cent for
"*binding a piece of ruffle* six yards long, that
"we would be obliged to pay five cents for if
"done by hand; there being a saving of four
"cents per piece of six yards in using the
"patented folding guides.

"The work done by the defendants, as shown
"on the corsets marked 'Exhibits on Accounts,'
"has one less fold, namely, the fold in the
"center, and, consequently, requiring about
"twenty-five per cent. less labor to fold it by
"hand. I *consider* three cents per piece of six
"yards, or half a cent per yard, would be a fair
"*estimate* of the difference in favor of work
"done by the folding guide over hand work.

"The saving in the number of yards, as
"testified to by Mr. William A. Nettleton, as
"having been made by the defendants, 1,217,870
"yards, would amount to $6,819.35."

(Should be $6,089.35—a mistake in division.)

Rec., fol. 74.

On the cross-examination, the complainant explains what he meant by the words "by hand" in his direct testimony (that above quoted), and adds:

"And unless much time is consumed, even
"after a person has become very expert in fold-
"ing, but a small amount of goods can be folded
"in a day; I have tried both ways, and am
"satisfied my *estimate* is a fair one."

Rec., fol. 79.

And in answer to the question "How many yards

a day of binding could be made by hand by one operator?" the complainant testified:

> "I do not think that any amount worth "speaking of could be folded by hand with "sufficient nicety to make a fold for corset "strips, because hand folding is sure to be wavy "and irregular, wide in some places and narrow "in others; but such quantity as a person could "make, using great care, might possibly "amount to, I should say, 150 yards a day."
>
> Rec., fol. 79.

The foregoing is *all* the evidence put in on the part of the complainant, as to the *profits* made or saved by the defendants by the use of the double-folding guide.

The complainant, however, testified on cross examination, that the strips made by the defendants, *could* be made by the use of a single guide, *at two operations.*

But alleged that such mode was an infringement of another patent owned by him, the Robjohn Patent, which was put in evidence by him. (Rec., fol. 74.)

No evidence, however, was offered by the complainant as to the profits or saving by the use of the double-folding guide, as compared with the use, at two operations, of a single folding guide.

The complainant also admitted that the patent in suit "did not cover the use of a single folder" (Rec., p. 12, 16 Cr-Int.), and that such single folders had been used since about 1859 or 1860. (Rec., fol. 77, 20, Cr-Int.)

The defendants also proved that strips such as they had made and used, were manufactured by third parties, as an article of trade and merchandise, at a cost, to purchasers, *for cutting and folding*, of 24 or 25 cents. per gross of yards (144). (Rec., fol. 87, 89.) And 75 cents per gross of yards, for material, cutting and folding. (Rec., 89.)

Defendant's counsel, on the hearing before the Master, relying upon the principles established in the decisions of the Courts

That the complainant must show *affirmatively* what profits the defendants had made by the use of the patented article, and that if he failed so to do he could recover nothing ;

And that the evidence to prove profits and damages must be *reliable* and *tangible*, and not *conjectural or speculative ;*

Offered no further evidence on the part of the defendants.

The Master reported that during the period of the alleged infringement there was no means known or used, or open to the public to use, for folding cloth or strips of cloth on each edge, besides the double folder described in the patent, other than folding such strips in such manner by the hand of the operator.

And that the profits derived by the defendants from the use of the double guide was one-half cent per yard, amounting on the whole quantity of strips made by the defendants to the sum of $6,089.35.

And that the complainants had also suffered damages by the alleged infringement of the defendants to the amount of $1,350.

MOTION TO SEND BACK THE CASE TO THE MASTER TO TAKE FUTHER EVIDENCE.

Defendants asked the Court below to send back the cause to the Master to permit them, *the defendants*, to show, notwithstanding such proof should properly be made by the complainants, what is the actual cost of folding strips on each edge, such as the defendants used, by the use of the double folder, and what the cost of folding such strips by hand, and what is the *actual* saving by the use of the double folder, in folding such strips, as compared with folding the same by hand.

The proof produced by the defendants show

clearly, that the *estimate* of the complainant as to the amount of saving effected by the use of the double folding guide, even if the evidence before the Master is regarded as justifying or supporting such estimate, is erroneous and extravagant.

Actual experiment of trial for a number of day in succession, shows that strips, such as the defendants made by the use of the double guide, can be made by hand, in a given time, to a much greater amount, and at a much less expense than as *estimated* by the complainant.

A *skilled* operator actually folded such strips for six successive days, at the rate of 1,157 yards per day; an *unskilled* operator, for the same length of time, folded 574 yards per day.

Nettleton's Aff't., Rec. fol. 174.

The actual cost of folding such strips, at the lowest rate of production, at the usual rate of wages, is shown to be less than 1.10th of a cent per yard, and that the *whole cost* of folding by hand, the 1,217,870 yards used by the defendants, would be only $1,046.25.

Nettleton's Aff't., Rec. fol. 175.

These proofs also show, from actual and careful trial, the quantity produced by the double guide to be 409 yards per hour.

Nettleton's Aff't., Rec. fol. 175-76.

And, that the actual saving by the use of the double guide, over hand work, amounts to only $872.43.

Nettleton's Aff't., Rec. fol. 176.

Such proof also gives reliable data as to the comparative production by the double guide at one operation, and by the *single guide* at two operations.

Double guide, 409 yards per hour.
Single guide, 274 yards per hour.

Batcheller's Aff't., Recd. fol. 187.

And also shows that the use of a single guide by the defendants is not any infringement upon the Robjohn Patent.

Brevoort's Aff't., Rec. fol. 189.

Upon these proofs, showing evident mistake and error in the *estimate* made by the complainant, as to the *profits* made by the defendants,

The defendants insist they should be permitted to show the extent of such mistake and error;

And what are the *actual* profits, as distinguished from *estimated* profits.

Actual profits only are recoverable against the defendants.

And the Court should permit it to be shown what such *actual profits* are.

This motion to send back was addressed to the legal discretion of the Court, and was denied. The affidavits in support of motion are all in this record, and, if need be, can be considered. They are submitted without futher argument.

First Exception.

The first exception charges, in substance, error in holding that the only means open to defendants to fold the strips used was by hand, whereas the finding should have been that defendants could have used a single guide twice, without liability to the complainant.

The proof which relates to this exception is as follows:

After speaking of the folding by means of the patent or double guide, and by hand alone, complainant says (fol. 74):

> "There was no other way known by me to "do work like that done by the defendants "except in the use of another patent owned by "me, which consisted of a folding guide, folding

"one edge, in combination with a device for "pressing said fold to an edge, and then passing "said folded strip through a narrower folder, "folding the other edge, and pressing said fold "by a pressing device."

Robjohn Re-issue patent produced; original, 1864.

Inspection will show that defendants have not infringed this patent.

See also Brevoort's affidavit and Batchelder's affidavit.

Wooster also says (fol. 78):

"16xQ. Do you claim that the patent in suit covers the use of a *single folder* or guide which *folds only one edge?*

A. No.

18xQ. How long did you know of the use of such a single guide?

A. I think I have known hemmers since about 1859 or 1860, in different forms.

19xQ. By "hemmer" do you mean such a single guide as I have described?

A I don't understand that you have described any.

20xQ. (18th cross-question repeated.)

A. *Such guides as are inquired of, those folding on one edge, I have known in various forms since about the year 1859 or 1860."* *That is 4 or 5 years before Robjohn's patent.*

Upon these admissions of complaint, modified, as they must be, by an *inspection* of the Robjohn patent, as to the allegation that they infringe such patent, defendants base their right to twice use *single* guides, folding each edge separately.

The re-issue patent expressly in the disclaimer clause, that "I do not claim guides for turning or "hemming *one edge* of a piece of cloth or other material," *except* when the guide is so shaped as

also to simultaneously either fold the material in the centre, or upon the other edge. The *single* folder did not come within terms of this exception.

Remember also that Chapins patent of 1856 showed a single guide, for turning on the hem, and that Douglas in his original application admitted that his own guide was composed of two Chapin single guides.—

> Defendant's witness CLOSE, fol. 73, says that after the injunction was served "We used some "machines with a single edge folder; a *boy* then "passed it through another single edge folder, "and folded the other edge. The strip did not "run from one fold into the other; it was taken "off, was run through with a reel in the other "folder also."
>
> (Single folder offered in evidence.)

Second Exception.

The substance of this exception is that the master reports that defendants made a profit at the rate of ½ a cent a yard, notwithstanding the fact that it was proven that the folded strips were, as an article of merchandise, *cut* and *folded* at about ⅙ of a cent per yard cost to purchasers.

Wooster makes a fallacious *estimate* without proper *data* or base (hereafter considered) of ½ a cent per yard profit, upon merely *folding* the strips.

JACKSON, fol. 88, and MAYER, fol. 89, testify that they were in habit of getting such strips from a factory in Clinton, Mass., and that the price which they paid for *cutting* the strips AND *folding* them was 25 cents per 144 yards, which is about ⅙ of a cent per yard.

It is manifest that when the Clinton Co. could both *cut* and *fold* for ⅙ of a cent, that the *profit* on *folding* alone could not be ½ a cent!

The Master must surely have overlooked this testimony of JACKSON and MAYER.

But further: MAYER testifies (fol. 89) that when his company furnished the *material*, the price of the Clinton Co. for *cutting* and *folding* the straps was 25 cents for 144 yards, but that since 1874 he *bought the material already folded* from that company for 75 cents per 144 yards.

Here it is shown that the *total* price of *material*, *cutting*, *folding*, *packing*, *manufacturers'* profit, and all *mercantile costs*, are such that the manufacturer, as matter of business, continued to make and sell the completed strips for about ½ a cent a yard.

Complainants' *estimate* is preposterous, in view of this *evidence*.

Complainants' estimate, it is to be noted, is not based upon any trials in making such *folded strips* as the defendents made, but from the making of an entirely different article, as ruffles and collars (Rec. fol. 68.) Such estimate is also proved to be erroneous by the evidence of the complainant as to the quantity of strips which he concedes could be folded by hand; namely, 150 yds per day (Rec. fol. 79), at usual rate of wages, $3 per week; the cost of folding by hand, at that rate of production, would be only *one third of a cent per yard*.

The *saving* therefore by the use of the double guide cannot be one half a cent per yard.

Third Exception.

In substance, charges error in reporting the sum named as profits, instead of reporting the profits to be the saving in the use of the double guide once, over the single guide twice. (See comments on first exception.)

The testimony of NETTLETON (fol 75) shows that only *one* girl was employed in folding strips on the double guide, and that the *total* amount paid for that service during the whole period of infringement was $345.99. At folio 75 he *estimates* that *only* three-fourths of her time was given to the business of folding; but, as this is only *estimate*

and not *an established fact*, defendants do not insist upon it.

Of course, it is *manifest* that if *one* girl, by pulling strips *once* through a *double guide*, made all that defendants used, at wages amounting to $345.99, then *two* girls, of equal capacity, could make the same amount by pulling strips *twice* through *single* guides.

The wages of the second girl ($345.99) is the sole *profit* made by defendants by the use of the double-guide over the single guide; and this profit of $345.99, and not $6,089.35, is the only profit, if any, which the Master should have reported.

Fourth Exception.

This fourth exception relates solely to the question of *damages*, and damages were not allowed by the final decree. There would seem, therefore, to be no question of damages before this Court.

The appellants are satisfied with the decree on that question, and it could not come before this Court except upon a cross-appeal by the appellee. There is no such cross-appeal.

Corning *v.* Troy, &c., Factory, 15 How., 465.

It is submitted, therefore, that there is no occasion for appellants to consider the facts or law relating to *damages*. The following portion of the brief under this exception is submitted merely that the whole case may be before the Court.

complainant to make out, *fairly and with certainty*, his case for damages, and that this has not been done in this case with any certainty or accuracy.

Complainant has acted on the assumption that the defendants are to be treated, so far as *calculating damages* is concerned, on the same footing as if they were *licensees* under *covenan* to pay for every guide ever *possessed* (*use* immaterial) by them. (Rec., fol. 78, cross.Q. 22.)

Upon this assumption complainant called for a

list of all the infringing guides acquired by defendants. In response they produce a list of twenty-seven guides, and give the dates of purchase.

Complainant claims the full royalties at highest rates, upon all of these guides, from the date of purchase of each one, to the end of the year in which the last one was purchased. This assumes that every guide bought lasted and was used from date of purchase to injunction. The aggregate thus claimed $2,900, reduced by Master to $1,350, and not excepted to by complainant.

It is familiar law:

That only *actual* damages can be recovered, and that complainant must make out his case with *certainty*.

That *damages* cannot be recovered for the mere *possession* of a patented article.

Licensees under *covenant* to pay for mere *possession*, as in this case, occupy a different position from these defendants. Such licensees convenant to pay for naked possession; possibly in an action on that convenant there could be a recovery.

But these defendants are simple infringers, without obligation or privity; there sole liability is for *actual* damage or *actual* profits.

There is, and can be, no proof to show damage or profit by the mere possession of the guides not used or used only to determine by experiment the *proper* width *to be* used.

The testimony shows that, all told, the defendants have had twenty-seven guides; that most were used *experimentally*, and that only *one* guide was in use at any one time (fol. 69); that from time to time this one guide would be removed from the one reel and another wider guide substituted; that sometimes a guide wore out in a single day.

NETTLETON, fol. 69 "We have never used but one folder at a time.

Q. Explain how it was that respondents had so large a number of folders, and yet, as you say, used only one at a time.

A. In the first place, we require different widths for the same corset; in the second place, we used variations of the same width until we were satisfied with the appearance and use; this is the first corset ever made in the factory, showing the width of what we call narrow strips.

(Witness produces a corset.)

That was found too wide, and we made three widths before adopting the regular width afterwards used. Here are two of the three widths, one made January 8, 1877, and the other March 15, 1877.

(Witness produces two corsets.)

We at last settled on the width which we now use, which is represented by the corset I now produce.

(Witness produces another corset.)

This variation in width caused a difference in folders; another reason that we used so many was in the effort to save the cloth; we varied as shown in the three strips produced by me.

(Witness produces three strips.)

I can't state accurately how long we were experimenting before we settled on the width now used—not less than three months; during the first six months we had five thousand and seventeen dozen corsets; these strips of material produced by me are samples of some of the material used by us; the strips on the corset are actual samples of the lighter materials; strip No. 1 is a sample of the medium weight; there was largely used a much heavier jean than any of those there; the heavier the jean the more rapidly it would cut away the metal of the folder; the strain on the folder comes all on the lower corner; when the corner gives way the folder must be repaired or thrown away; this sample shows a folder broken away at the corner.

(Produces a folder so broken.)

I have no means of giving the length of time that a folder could be used; I know that the folder which I have produced would not last 24 hours with the heaviest jean; the strain is so heavy that I have myself, often seen the strip tear in two on passing through the folder; we are obliged to give up our best jeans because we could not work them satis-

(Witness produces sample.)

By Mr. BETTS:

"The time of the one girl was exclusively employed on the folders when that work was required; sometimes on other goods; I can give an approximate idea as to how much of her time was employed on the folders, and how much on other work, from the books; some of these guides were thrown aside as soon as a more suitable width was adopted; I can't tell how long they were used before thrown aside; all the rest, so far as I know, were used till worn out or stopped by the injunction."

CLOSE says, fol. 83:

"I am in the employ of Thomson, Lang-
"don & Co., and have been ever since June,
"1887; my principal business was cutting
"strips, superintending the strip department,
"which includes the folding machine; the strip
"passes between two wheels, and then across
"the plate where the folder, then on the reel.
"*One* folder at a time was used on a ma-
"chine."
"The *largest* number of folders I have had
"in my possession at one time is *seven;* we
"made in one day binding for seventy-four
"dozen corsets, using *four* folders, *four* differ-
"ent widths; about sixty-nine yards of ma-
"terial were used, "which was a little more
"than the average; *some of these folders wore*
"*out by use; in one case, one wore out in a day;*
"the material used on that one was a heavy
"jean, we used that material for about a year;

"the folder that broke, or wore out, I handed "to the machinist, and he ordered others; "Mary McConnell was the person who used "the folders; she was the only one, unless she "was out a day or so, and then somebody took "her place; *seven* is the greatest number of "different widths of folders used; Mr. Nettle- "ton told me to stop the use; we then had "seven folders in use."

JACKSON says, fol. 88:

"Mr. Nettleton ordered the first double folder "that was used by the defendants at their fac- "tory in Bridgeport. I had superintendence "of the entire works. The *first one* was simply "*a trial*, but *a failure;* we used it only for a "*short* time. Owing to the thinness of the "brass of which it was made, it wore out too "quick, and it was also a little too wide for "our purpose.

"We next got half a dozen of those folders. "Mr. Nettleton thought it best to get half a "dozen, *because they wore out so quick.* They "were given into my charge after they came "into the factory for use; *we used only one at* "*a time*—only one width was wanted. One "little girl was running it. We had two or "three made *to experiment* with, of *other* "widths. I think *constant use would wear* "*them out in two weeks.* In the slow way that "we used them, I think they lasted two or "*three weeks.*"

Defendants submit that above testimony clearly shows:

1. That complainant has not made out with *certainty* any proof of the extent of *use* by defendants; or,

2. That, as but one guide was in use at a time, but *one* royalty should be allowed; or,

3. That four folders in one day (fol. 83) was the largest number used in any one day; assuming this to be true, and, *also*, assuming, which is *not proven*, that defendants did actually use four folders a day during term of infringement. then four royalties would be the measure of damages; or,

4. That (see CLOSE, fols. 83–84), *seven* folders is the greatest number of folders ever in the *possession* of the superintendent at one time, then *seven* royalties would be the maximum of recovery of damages.

This leaves for consideration: What is the "royalty" which is to be held as proved in this case as a measure of damage?

From complainant's testimony it appears that the royalty *varied,* that, in fact, he took what he could get.

In a list of 242 licensed guides produced by complainants, the *average* license fee actually *received* was $36.49 for each year for each guide.

That ordinarily $50 was the fee for one guide for one year; that $100 was the fee for three guides; $150 for five guides; $250 for 10 guides; $500 for 20 guides. These rates were proposed to defendants (fol. 80).

These sums were the compensation named by complainant as the price or value of the use of his guides; and it would seem that the actual amount received as an average would be the utmost he should recover—*i. e.*, $36.49 per guide.

There are several rates, either of which may be held the true measure by the Court.

1.	The *average* actually received	$36.49
2.	The highest rate for a single guide	50.00
3.	When 3 guides are paid for, each	33.33
4.	When 5 " " " " "	30.00
5.	When 10 " " " " "	25.00

Now, if the Court holds that defendants owe for

one royalty for 3 years — then the damages would be:

1 royalty $50 × 3 years = ... $150.00

or,

1 royalty $36.49 × 3 years = ... $109.47

If the Court hold that the defendants owe for four royalties for 3 years — then the damages would be:

4 royalties at $33.33⅓ × 3 years = ... $400.00

or,

4 royalties at $36.49 × 3 years = ... $437.88

or,

4 royalties at $50 × 3 years = ... $600.00

If the Court take the extreme limit and hold that defendants owe for *seven* royalties for 3 years—then the damages would be:

7 royalties at rate of $30 × 3 years = ... $630.00

or,

7 royalties at rate of $36.49 × 3 years = ... $769.29

or,

7 royalties at rate of $50 × 3 years = ... $1,050.00

Defendants infringed only two and a quarter years, not three years. It would seem, therefore, that as their *actual* use was only for two and a quarter years, that they should not be held for actual damages for any longer period; if the Court assent to this view, then above amounts should be reduced by one quarter (see Birdsall *v.* Coolidge, 3 Otto, 64.70).

On the whole case no damages should be awarded.

Profits.

The law upon this point is very familiar. The burden is upon complainant, by reliable and tangible *proof*, not estimate, conjecture, or opinion,

to distinguish and affirmatively *prove* the amount of profits, and that they are due to the thing patented.

Evidence on part of complainant must not be estimate, conjecture and opinion, but must be such as to afford a *sound and safe basis of calculation.*

Ingersoll *v.* Musgrove, 14 Blatchf., 541.

The patentee's evidence must be *reliable* and *tangible*, and not *conjectural*, or speculation.

Garrettson *v.* Clark, 15 Blatchf., 70.

Burden of proof on complaint; where the proof is *meager* and indefinite only nominal damages sustained.

Blake *v.* Robertson, 4 Otto, 728.

Complainant must *affirmatively* show distinct profits due to the thing patented; if he fail he cannot recover anything as damages.

Mowry *v.* Whitney, U. S., 1.
Mfg. Co. *v.* Cowing, 105 U. S., 253.
Schellinger *v.* Gunther, 15 Blatchf., 303, 310.
Burdel *v.* Denig, 2 Otto, 716.
Gould's Mfg. Co. *v.* Cowing, 12 Blatchf., 243.
Same *v.* Same, 14 Blatchf., 315.
Black *v.* Munson, 14 Blatchf., 265.

The only testimony in the case as to *profits* (except that of Jackson & Mayer, who prove that strips were manufactured at a charge of 25 cents per 144 yards for *cutting* and *folding*, and sold at a price of 75 cents per 144 yards cut and folded including material), is that of the complainant.

We print below all of his deposition on that point (*italics* are ours), fols. 73, 74:

I had a large experience in the used guides covered by this patent, derived from their use in the manufacture of fancy

NOTE.—Wooster's experience was with RUFFLES and collars, not with strips for corsets.

The Basis for Profits.

In a case against one Taylor, by this complainant, Wheeler, *D. J.*, held that even when the complainant's sole mode of realizing from his patent was the grant of licenses, still the defendant was liable for *profits* beyond the cost of making ruffles in any other mode open to him than that of the patentee.

Wooster *v.* Taylor, 14 Blatchf. 487.

We cannot agree with the reasoning of that case.

In that case, as in this one, the *damage*, if any, to the complainant was the loss of his royalty; and the *profit* to the defendant was merely the *saving* of that royalty. That saving when *proved clearly*, is the measure of *profits*. The gain or advantage to defendant should be thus measured, and not by comparing the double guide with hand-work.

It was open to defendants to buy a license at established rates; by refusing to do so they saved or gained the price of that license, and that was their sole *profit*. At law, such gain would be termed *damages*, in equity it would be termed *profits*—in essence they are identical—they differ only in respect to the terms applied on different sides of the Court. Where there is wickedness in the infringement the Court can, on motion, increase the damages, and thus compensate complainant for expenses beyond taxable costs. Since 1870, Courts of equity have had jurisdiction of *damages*, as well as of *profits*. Under this view, the Court would award *as profits*, *eo nomine*, the amount saved in royalties, but that proof was not only vague, uncertain and conjectural, but was proven *as damages*, *eo nomine*, and the Court below disallowed damages, and there being no cross-appeal, the question of damages is not before this Court.

In other words, the proof of profits rest upon the proof of damages, and damages not having proved with requisite certainty, and not being before the Court, neither profits nor damages can be awarded.

See Garrettson *v.* Clark, 111 U. S., 120.
Black *v.* Thorne, 111 U. S., 122.

This really is a case of *damnum absque injuriâ*.

yards, as testified to by Mr. William A. Nettleton as having been made by the defendants, 1,217,870 yards, would amount to $6,089.35. There was no other way known to me to do work like that done by the defendants except in the use of another patent owned by me, which consisted of a folding guide, folding one edge in combination with a device for pressing said fold to an edge and then passing said folded strip through a narrower folder folding the other edge, and pressing said fold by a pressing device. I produce a copy of the patent in question.

parison between folding strips by hand and by the patented guide.

It is a fallacious comparison. He *estimates* without *data* that defendant's strips, having two folds instead of three, would cost one-quarter less than three folded strips *bound on ruffles*. He nowhere gives any data as to the effect of the sewing machine combined w th the triple guide, in reducing cost of binding ruffles.

Wooster further says, fol. 79:

23xQ. Explain what you meant by the words "by hand" in your direct testimony, when you estimated a saving per yard by the use of the patented device?

A. By the use of the patented device a flat strip of raw edged goods is entered in an inclosed channel-way, the configuration of the metal forming the guide causing the raw edges of the strip to be folded over on each edge simultaneously, enabling a person entirely unskilled by its help to fold on each edge as much goods as can be pulled through said guide. In order to do this by hand, that is, without the use of a guide, it is necessary to fold down first one edge and then the other, consuming much time, making very unsatisfac-

There is nothing in this to give any data or tangible facts capable of test by the Court as to the relative cost of hand or guide folding.

He should have stated that by certain defined experiments he had actually made so many yards each way—not to rest upon mere assertions of an estimate.

tory and, if the hands are not perfectly clean, very dirty work. And unless much time is consumed, even after a person has become very expert in folding, but a small amount of goods can be folded in a day; I have tried both ways and I am satisfied my *estimate* is a fair one; and that is not the only saving; folding by hand requires from 25 to 33⅓ per cent. more goods than the guide does, and if I add that to my *estimate* of the saving obtained by the use of the guide, it will add some hundreds of dollars to the sum I have before mentioned.

The statement that folding by hand requires more material, 25 to 33⅓ per cent., is absurd on its face and is not supported by any evidence whatever.

24xQ. How many yards a day of binding could be made by one operator?

A. I do not think that any amount worth speaking of could be folded by hand with sufficient nicety to make a fold for corset strips, because hand folding is sure to be wavy and irregular, wide in some places and narrow in others; but such quantity as a person could make, using great care, might possibly amount to, I should say, 150 yards a day.

Assuming it true tha only 150 yards could be olded in a day, at ordinary girl's wages of $3 per week of 6 days, the total cost would be ⅛ of a cent per cent. per yard, instead of ½ as estimated by the complainant.

Formal exception is not necessary to raise the question that the Master has reported profits upon insufficient evidence. It is sufficient to show, from the record in the case, that profits, as found and reported, cannot be justified from the evidence produced.

If the Master's Report is not justified and legal from the evidence produced before him, such defect

or illegality is not cured or removed by the mere neglect to take formal exception for such defect.

Summary.

We therefore ask the Court:

1. To dismiss the bill—Because the reissue was invalid, for each and all of the Reasons relating to that defense; or,

2. To find nominal damages only; or,

3. To find damages according to some one of the calculations made under the fourth exception; or,

4. To find nominal profits only; or,

5. To find profits at the sum of $345.99, as calculated under third exception.

Respectfully submitted,

J. C. CLAYTON,
A. Q. KEASBEY,
of Counsel for Appellants.

NEWARK, N. J., Nov. 13th, 1884.